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Dominions
(South African)
No. 3.

Confidential.

CORRESPONDENCE

[1927—1929]

RELATING TO THE

Territories Administered by the High Commissioner for South Africa.

I. Question of Transfer.

II. Question of Mineral Concessions in the Bechuanaland Protectorate.

3
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(*In continuation of Dominions (South African) Nos. 1 and 2. Continued by Dominions (South African) (No. 4).*)

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2 The High Commissioner, Confidential ... February 11 (Rec. Mar. 1)	Refers to No. 72 in Dominions (South African) No. 1, and encloses copies of correspondence with the Resident Commissioner of Swaziland respecting an inquiry by the European Advisory Council whether any conversations on the subject of the transfer of the Territory to the Union took place during General Hertzog's visit to England 2
3 Extract from letter from Sir C. Coghlan to Mr. Amery, Personal February 12 (Rec. Mar. 7)	Expresses pleasure at the prospect of the assignment of the Tati district to Southern Rhodesia at an early date 3
4 Extract from letter from Mr. Amery to Sir C. Coghlan, Personal and Confidential ... March 16	Points out that no further progress can be made in the matter pending further discussion with General Hertzog, and doubts whether, in view of the necessity for taking the views of the inhabitants, the question can be disposed of by the end of the year 5
5 The High Commissioner, Confidential ... March 4 (Rec. Mar. 21)	Transmits copies of correspondence with Mr. R. McFarlane regarding the taking of a referendum on the question of the inclusion of the Tati district in Southern Rhodesia 4
6 The High Commissioner, Confidential ... ... April 8 (Rec. Apr. 25)	Transmits copy of correspondence with Mr. R. McFarlane regarding representations being made to the Secretary of State regarding the inclusion of the Tati district in Southern Rhodesia 5
7 The High Commissioner, 501 ... October 10 (Rec. Oct. 31)	Transmits copy of letter received from Mr. Amery prior to his departure from South Africa stating that he did not see his way to arrange for the transfer of Tati to Southern Rhodesia in the near future; together with copy of despatch to the Resident Commissioner requesting him to inform the European settlers in the district of this decision, and stating that the Southern Rhodesia Government is being invited to accord every possible facility to the inhabitants of Tati 6
1929 —	
8 Lords Burton, Gladstone, and Selborne to Lord Passfield ... November 8	Reiterates views already expressed in a memorandum dated 4th August, 1926 (No. 63 in Dominions (South African) No. 1), regarding the question of the incorporation of Swaziland in the Union, and urges that before the Imperial Government accept the proposal for the consideration of transfer, they should be in full possession of the native policy adopted by the Union Government 7

South African.—**Gp. 6.** 3341/2405. 30. 9/31. (94229) M. & S.

II. MINERAL CONCESSIONS IN THE BECHUANALAND PROTECTORATE.

Serial No., From or to Whom, Despatch No., &c., and Date.	Subject and Page No.
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9 The High Commissioner, 39 January 20 (Rec. Feb. 7)	Transmits a copy of a despatch from the Resident Commissioner, Mafeking, regarding the anxiety felt by the Bangwaketse in connexion with the two concessions held by the Balkis Company in their territory ... 8
10 Sir C. T. Davis to Mr D. O. Malcolm ... ... February 17	Encloses copy of the revised form of the Khama Concession, and an extract from the High Commissioner's despatch setting out certain alterations in the Northern Rhodesia Mining Law which he suggests would be necessary in adapting it to the Bechuanaland Protectorate. Suggests certain items for consideration in framing the proposed Bechuanaland Protectorate Mining Law, and requests observations thereon 10
11 Mr. D. O. Malcolm to Sir C. Davis ... ... May 4	Encloses, with observations, copy of a memorandum upon the points raised in No. 10 11
12 The High Commissioner, 215 ... ... April 21 (Rec. May 9)	Refers to No. 9 and transmits, with observations, copy of a despatch from the Resident Commissioner regarding an agreement entered into by Mr. J. van Praagh with the Balkis Company in respect of the two mineral concessions held by that Company, together with his reply thereto 14
13 The High Commissioner, Telegram ... ... June 8 (Rec. June 8)	States that a man has arrived in the Bamalete Reserve who persists in prospecting for minerals under the alleged authority of Balkis Company. States what action has been taken, and requests telegraphic instructions 18
14 To the High Commissioner, Telegram. Confidential June 10	In reply to No. 13, states that it has not yet been found possible to enter into any negotiations with Balkis Company, and for the present it seems necessary to act on the assumption that the Company's rights extend to the Bamalete Reserve 18
15 The High Commissioner, 269 ... ... May 25 (Rec. June 13)	Transmits copy of a despatch from the Resident Commissioner, Mafeking, forwarding an extract from a minute by the Resident Magistrate, Kanye, stating that no diamonds had been found in the district, but that good quality asbestos in large quantities had been discovered 18
16 The High Commissioner, Confidential ... ... June 13 (Rec. July 4)	Refers to Nos. 13 and 14, and transmits copy of correspondence with the Resident Commissioner, Mafeking, regarding the arrival of Mr. A. A. Ranou in the Bamalete Reserve for the purpose of prospecting for minerals there under the authority of the Balkis Company 19
17 The High Commissioner, Telegram ... ... August 17 (Rec. Aug. 17)	States that Sir D. Chaplin has submitted details of system of special grants. Is of the opinion that promulgation of mining legislation should be expedited. 21
18 To the High Commissioner, Telegram ... ... August 19	Refers to No. 17 and thinks that Advisory Council should be informed that matter will be expedited so far as will permit, and requests early transmission of draft proclamation for consideration 21
19 The High Commissioner, Confidential (2) September 27 (Rec. Oct. 17)	Refers to No. 16 and encloses copy of further correspondence with the Resident Commissioner, Mafeking, on the subject of the prospecting activities of Mr. Ranou and his associates in the Bamalete Reserve ... 22

Serial No., From or to Whom, Despatch No., &c., and Date.	Subject and Page No.
1927	
20 To the High Commissioner, Secret ... ... November 9	Refers to No. 55 in Dominions (South African) No. 2 and states that the Law Officers are of the opinion that the Khama Concession has to be construed according to the Law of the Cape of Good Hope and they feel bound to conclude that the Paramount Chief of the Bamangwato, for the time being, is entitled to determine the Concession by giving a year's notice. They consider that there is jurisdiction in the Resident Commissioner to try an action brought by the British South Africa Company against the Paramount Chief to enforce the Company's rights under the Concession 23
1928	
21 Mr. J. B. Sidebotham (Dominions Office) to Mr. P. J. Baird (British South Africa Company) November 29	Sets out five additional points of principle regarding the draft Bechuanaland Protectorate Mining Concession, which Sir Edward Harding thinks might be further discussed with Sir Drummond Chaplin ... 24
22 Mr. J. B. Sidebotham (Dominions Office) to Mr. P. J. Baird (British South Africa Company) December 5	Encloses a copy of a note of a discussion regarding the draft Bechuanaland Protectorate Mining Proclamation which took place on 30th November, and states that, when the note is agreed, it is proposed to forward a copy to the High Commissioner 25
23 Mr. P. J. Baird (British South Africa Company) to Mr. J. B. Sidebotham (Dominions Office) December 6	States that, subject to the reservations indicated, the Directors concur in the note of discussion enclosed in No. 22 27
24 To the High Commissioner, Confidential ... December 6	Transmits copies of a memorandum received from the British South Africa Company regarding the draft Bechuanaland Protectorate Mining Proclamation ... 28
25 To the High Commissioner, Confidential ... December 13	Refers to No. 24 and states that the draft Proclamation was discussed with the Directors of the British South Africa Company on 30th November. Encloses copies of correspondence on the subject and of a note on the discussions 28
1929	
26 To the High Commissioner, Confidential, No. 41 January 23	Refers to Nos. 24 and 25 and requests that the various points raised should be discussed further with Sir Drummond Chaplin after consultation with legal advisers. Comments on No. 23 and observes on various points in connexion with the draft Proclamation 29
27 To the High Commissioner, Telegram No. 6 January 26	States that, as De Beers Company in London have referred to Kimberley, there will be no objection to draft being shown to Sir E. Oppenheimer 31
28 The High Commissioner, No. 62, Confidential February 1 (Rec. Feb. 18)	Transmits, with observations, another draft of the Proclamation and requests views on the proposals put forward 31
29 The High Commissioner, Confidential, 136 February 22 (Rec. Mar. 11)	With reference to No. 12, transmits a copy of a despatch dated 9th February, 1929, from the Resident Commissioner of Bechuanaland enclosing, with observations, a copy of a minute dated 22nd January, 1929, from the Magistrate at Kanye on the subject of mineral concessions held by the Balkis Company ... 33
30 The High Commissioner, No. 138 ... ... February 22 (Rec. Mar. 11)	Transmits, with observations, preliminary draft opinion by Mr. D. Buchanan as to the validity and terminability of Chief Khama's Concession dated 25th July, 1893 35

Serial No., From or to Whom, Despatch No., &c., and Date.	Subject and Page No.
1929	
31 To the High Commissioner, Telegram, No. 21 ... March 14	Refers to No. 28 and proposes to reserve detailed consideration of suggested amendments or further reference to the British South Africa Company until the final recommendation of the High Commissioner, made after consultation with the legal adviser, have been submitted. Comments on new proviso (*b*) to Clause 31 38
32 The High Commissioner, No. 148 ... ... February 28 (Rec. Mar. 18)	Summarizes a discussion between the Imperial Secretary, Advocate Buchanan, and Rev. A. Jennings, of the London Missionary Society, on the subject of the Khama Mineral Concession 38
33 The High Commissioner, Confidential, 166 ... March 11 (Rec. Apr. 2)	Refers to No. 29 and encloses copy of correspondence with the Resident Commissioner, Mafeking, on the subjects of the Kanye Asbestos Company's operations in the Protectorate 40
34 The High Commissioner, Telegram, No. 22 ... April 5 (Rec. Apr. 5)	In reply to No. 31, states that he has arranged conference on 22nd April for discussion of new Concession and requests authority to arrange corridor for watering tribal cattle on the Limpopo River if the Company is willing to surrender land 42
35 The High Commissioner, 201 ... ... March 22 (Rec. Apr. 8)	Transmits copies of legal opinions on the terms of the Khama Concession in view of which the Government is morally bound to endeavour to secure a new Concession for the Company. Discusses question of securing access to the Limpopo River for tribal cattle 42
36 To the High Commissioner, Telegram, No. 31 ... April 11	Has no objection to the corridors through the Tuli Block provided representatives of all parties concerned are consulted; comments on necessity of alternative Concession if this scheme has to be abandoned; agrees to communication of draft mining proclamation to the Chief on the understanding referred to in No. 34 45
37 The High Commissioner, Telegram, No. 27 ... May 2 (Rec. May 2)	Sets out alternative terms offered by the Company and states that he is consulting the Mining Expert regarding assessment of profits. Urges concurrence in the grant of user of certain Crown Lands to the Chief for grazing 46
38 The High Commissioner, Confidential, 240 ... April 16 (Rec. May 6)	Transmits copy of correspondence with the Resident Commissioner, Mafeking, regarding the mineral concession held by the Ralkis Company in the Bechuanaland Protectorate 47
39 To the High Commissioner, 157, Confidential ... May 7	Acknowledges No. 35, refers to paragraph 2 (iv) of No. 26 and assumes that questions referred to therein will be dealt with comprehensively in due course ... 48
40 The High Commissioner, Telegram, No. 31 ... May 11 (Rec. May 11)	Gives summary of draft agreement; is of opinion that the Chief will accept, and hopes the Secretary of State will endeavour to persuade the Company's directors in London to accept also 49
41 The High Commissioner, Telegram, No. 32 ... May 16 (Rec. May 16)	Quotes telegram from Messrs. Jennings and Buchanan to the London Missionary Society requesting representations to the Secretary of State with the object of reversal of the Government's mining policy. Is of opinion that this action is due to missionary obstruction and suggests that the Society be refused audience until further information is received from the High Commissioner 51

Serial No., From or to Whom, Despatch No., &c., and Date.	Subject and Page No.
1929	
42 The High Commissioner, Telegram, No. 33 ... May 16 (Rec. May 16)	Suggests, with reference to No. 41, that the London Missionary Society should be persuaded to support the Government's mining policy of limiting prospecting to a period of 20 years, and thereafter confining mining operations to a few proved mineral areas ... 51
43 The High Commissioner, Confidential, No. 299 May 10 (Rec. May 28)	With reference to No. 38, transmits copies of correspondence with the Resident Commissioner, Mafeking, concluding that the activities of the Kanye Asbestos Company are at present limited to prospecting ... 52
44 The High Commissioner, Telegram, No. 41 ... May 26 (Rec. May 26)	Requests permission to inform the Chief that Imperial Government is satisfied that carefully regulated mining operations should be undertaken in the Reserve, that the natives will not be disturbed by such operations, and that it is not necessary for the Chief to proceed to London to discuss the matter with the Secretary of State 53
45 To the High Commissioner, Telegram, No. 48 ... June 3	Asks for the High Commissioner's views on the Chief's representations which are being sent home through the London Missionary Society and are due on 10th June. Points out desirability of replying to those representations through the High Commissioner, and that the Society should not be accepted as acting for the Chief for reasons stated: Chief should be discouraged from visiting England 53
46 The High Commissioner, Telegram, No. 51 ... June 27 (Rec. June 27)	In reply to No. 45, states that the communication to the London Missionary Society does not emanate from the Chief although supposed to express his views. Requests copy of the representations before the interview which he has promised the Chief at the end of July 54
47 To the High Commissioner, Telegram, No. 58 July 5	States that London Missionary Society were under the impression that the Chief's representations were being sent home by him direct. In view of apparent misunderstanding, proposes to await result of the interview between the High Commissioner and the Chief ... 54
48 To the High Commissioner, Telegram, No. 65 ... August 1	Deprecates any pressure being placed on the Chief to sign the revised Concession. Comments on certain clauses 54
49 The High Commissioner, No. 444 ... August 16 (Rec. Sept. 3)	Reports on the interview between the High Commissioner, the Resident Commissioner, &c., and the Chief, with subsequent correspondence 55
50 The High Commissioner, No. 462, Confidential August 23 (Rec. Sept. 10)	With reference to No. 49 discusses the desire of the Chief to avoid transfer of the Protectorate to the Union of South Africa 66
51 The High Commissioner, Telegram, No. 72 September 18 (Rec. Sept. 18)	Reports representations of the three Chiefs referred to; states that the Company request that the new Mining Law should be applied to other concessionary areas pending settlement of the Bamangwato dispute. Recommends early settlement of Mining Law and favourable consideration of the Company's proposals ... 67
52 To the High Commissioner, Telegram, No. 80 September 28	States that visit of Chiefs to England for interview with the Secretary of State would serve no useful purpose for reasons indicated. Promises further communication as to Mining Law after discussion with the British South Africa Company 68

Serial No., From or to Whom, Despatch No., &c., and Date.	Subject and Page No.
1929	
53 To the High Commissioner, Telegram, No. 89 November 1	Enquires whether the High Commissioner has any further suggestions to make as to the form of the proposed Mining Proclamation, before the revised draft is sent to the Company. Asks that consideration be given to the inclusion in the Proclamation of clauses relating to compensation for death or accident to natives 68
54 The High Commissioner, No. 611 ... November 15 (Rec. Dec. 3)	Indicates amendments to the draft Mining Law which require to be considered; states that they have not yet been agreed to by the Companies concerned nor reviewed by mining expert or legal adviser. Favours application of the Proclamation to the remainder of the Protectorate pending settlement of the Khama Concession 69

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CORRESPONDENCE
[1927—1929]
relating to the
Territories Administered by the High Commissioner for South Africa.

I.—TRANSFER OF TERRITORIES.

D. 11543/26.

No. 1.

SOUTH AFRICA.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Swaziland.)
(Secret.)

Downing Street, 18th February, 1927.

MY LORD,

I HAVE the honour to refer to your Confidential despatches of the 1st* and 15th October,† in which you discuss the question of the demands of the Advisory Council in Swaziland for further financial assistance for development.

2. The question being one which is necessarily largely dependent upon the position with regard to the transfer of the administration of the Territory to the Union, I deferred replying to your despatches until I knew whether you thought it desirable to make any further statement on the latter subject following my conversation with General Hertzog. In the absence, however, of a reply to my telegram of the 3rd December,‡ I assume that you have not thought any such statement necessary at present.

3. I understand that General Hertzog is likely to resume discussions on the question of transfer later in this year, and that subject to the reception which may be accorded to his native legislation in the Union Parliament it is possible that an application for the transfer of the Territory may be expected next year. It would be difficult for His Majesty's Government to take up the question of the development of the Territory if they are to remain in control of Swaziland for only another year or so. But if, as the result of the forthcoming discussions, it should be found that the question of transfer would have to be postponed for a considerable period, it would be desirable that His Majesty's Government would have in their possession definite information as to the measures required, while the Territory remains under their control, to meet its reasonable needs. It would indeed be convenient if this information were available before any further discussions with the Union Government on the question of transfer take place.

4. I note from your despatch of the 1st October, that, so far as further transport facilities are concerned, you are of the opinion that steps should be taken to provide good roads and a system of motor transport between various districts and the points where railway communication approaches Swaziland borders. I should be glad if you would consider, in confidential consultation with the Resident Commissioner, whether a detailed scheme can be drawn up for financing this and any other form of development which you would advocate, indicating in particular for each scheme the probable capital cost, how it would be proposed that the money should be raised, what annual charges in respect of (*a*) the capital cost and (*b*) working and maintenance would be involved and how such charges could be met. You will, of course, appreciate the difficulties that the circumstances of Swaziland impose in the way of provision of further funds. The Territory has already liabilities in the debt to Basutoland and advances from the Crown Agents for the Colonies, which are not inconsiderable having regard to its revenues, and, as Swaziland is a Protectorate, it is not possible for the Administration to raise a loan under the terms of the Colonial Stocks Acts, even if the adoption of this course were otherwise free from difficulty. I should not wish to rule out all question of application being made to the Treasury for a grant-in-aid but it must be remembered that, in accordance with the present practice, such grant-in-aid if made would be treated as a loan which would ultimately have to be repaid, and, further, that assistance of this kind would involve bringing Swaziland under the financial control of the Treasury.

I have, &c.,
L. S. AMERY.

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* No. 71 in Dominions (South African) No. 1. † No. 73 in Dominions (South African) No. 1.
‡ D. 12724/26; not printed.

D. 2130/27.

No. 2.

SOUTH AFRICA.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 1st March, 1927.)

(Swaziland.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 11th February, 1927.

WITH reference to my despatch No. 480 of the 8th October* last regarding the political future of Swaziland, I have the honour to transmit herewith a copy of a despatch from the Resident Commissioner at Mbabane respecting an inquiry which has been addressed to him on behalf of the members of the European Advisory Council whether any conversations on the subject took place during General Hertzog's recent visit to England.

I also enclose a copy of the reply which I have sent to Mr. Honey after I had had an opportunity of mentioning the question to the Union Prime Minister.

I have, &c.,
ATHLONE,
High Commissioner

Enclosure 1 in No. 2.

(Swaziland.)
(Confidential.)
(No. 1.)

Resident Commissioner's Office, Mbabane, Swaziland,
3rd January, 1927.

MY LORD,

WITH reference to my despatch No. 356 of 4th October, I have the honour to transmit a copy of a letter from Mr. A. Millin, Mbabane, inquiring on behalf of the Advisory Council whether any statement can be made with reference to the future of the Territory as a result of General Hertzog's visit to London.

I have, &c.,
D. HONEY,
Resident Commissioner.

Major-General His Excellency
The Right Honourable
The Earl of Athlone, G.C.B., G.C.M.G., G.C.V.O., D.S.O., A.D.C.,
High Commissioner for South Africa.

The Government Secretary,
Mbabane, Swaziland.

SIR, Mbabane, 23rd December, 1926.

As the Right Honourable the Premier of the Union of South Africa has now returned to the country and as the Advisory Council, in view of the very serious position of Swaziland, desires to learn whether any conversations have taken place or decisions arrived at relative to the future of the Territory, I have the honour to inquire whether His Honour the Resident Commissioner is in a position to inform the Council as to what steps are likely to be taken in this connexion.

In view of public opinion the question of our future is of the utmost importance and if information on this subject has not yet reached His Honour, I am instructed to urge that steps be immediately taken to inquire from His Excellency the High Commissioner whether any definite statement on the subject can now be made to the Council.

I have, &c.,
A. MILLIN,
Hon. Secretary,
Swaziland Advisory Council.

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* No. 72 in Dominions (South African) No. 1.

Enclosure 2 in No. 2.

(Swaziland.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 11th February, 1927.

WITH reference to your despatch Confidential of the 3rd January, I have the honour to inform you that in the course of an interview with the Prime Minister I availed myself of the opportunity to ask for an expression of his interpretation of the informal conversations which I understood had taken place between himself and the Secretary of State on the subject of the future of Swaziland.

General Hertzog informed me that the conversations were general in character and that he hopes to be in a position to resume discussion of the subject during the next recess of the Union Parliament.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner of Swaziland.

D. 2801/27.

No. 3.

SOUTHERN RHODESIA.

SIR C. COGHLAN (PRIME MINISTER)

to

MR. AMERY (DOMINIONS OFFICE).

(Received 7th March, 1927.)

[Answered by No. 4.]

(Extract.)
(Personal.)

Premier's Office, Salisbury, Southern Rhodesia,
12th February, 1927.

MY DEAR MR. AMERY,

* * * * * * * * * *

I am very pleased at what you say about Tati, and to learn that there is a prospect of that district being definitely assigned to Southern Rhodesia before the end of the year. The restoration of that region to Southern Rhodesia, of which it was an integral part, will be a great boon to the settlers there.

* * * * * * * * * *

I have, &c.,
C. P. S. COGHLAN.

D. 2801/27.

No. 4.

SOUTHERN RHODESIA.

MR. AMERY (DOMISIONS OFFICE)

to

SIR C. COGHLAN (PRIME MINISTER).

(Extract.)
(Personal and Confidential.)

Dominions Office, Downing Street, 16th March, 1927.

DEAR SIR CHARLES,

* * * * * * * * * *

As to the Tati district, I do not, as you know, desire to place any unnecessary obstacle in the way of a transfer to Southern Rhodesia, but I am afraid that we cannot make any progress in the matter until after the further discussion with

General Hertzog which I hope to have when I am in South Africa. In any case, it would of course be necessary to take the views of the inhabitants, and before this could be done, the Government of Southern Rhodesia and the Administration of the Bechuanaland Protectorate would have to confer as to the terms on which the transfer might be effected. I doubt therefore whether it would be safe to assume that the question will have been disposed of by the end of the year. My letter of 24th December* was certainly not meant to convey the impression.

* * * * * * * * * * *

Yours, &c.,
L. S. AMERY.

D. 2948/27.

No. 5.

SOUTH AFRICA.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 21st March, 1927.)

(Bechuanaland Protectorate.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 4th March, 1927.

WITH reference to your Confidential despatch of the 18th May, 1925,† I have the honour to enclose, for your information, a copy of correspondence with Mr. R. McFarlane on the subject of the proposed incorporation of the Tati district within Southern Rhodesia.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 5.

DEAR CAPTAIN CLIFFORD, Strathearn, Tsessebe, 22nd February, 1927.

IT is the intention of the inhabitants to proceed with the taking of a referendum "For or Against" the Tati Territory being incorporated within Southern Rhodesia.

Since the original Petition of August, 1922, no definite answer has been accorded us though mention has been made of our desires on several occasions in the House of Commons. In this connexion we notice that it has been stated in replies that no referendum has yet been taken.

We therefore take it that we will be in order to proceed with the above project and such will meet with your approval. And in that assumption will you please put us right as to the following:—

Qualification for Voters.
Procedure in taking the Vote.
Advised wording of Voting papers.

I desire you make His Excellency acquainted with the subject of this letter and trust His Excellency will approve and give us his sympathy.

With every kind thought,
Yours, &c.,
ROBERT MCFARLANE.

To the
Imperial Secretary.

Enclosure 2 in No. 5.

DEAR MR. MCFARLANE, 4th March, 1927.

CAPTAIN CLIFFORD is at present absent from South Africa on leave of absence and I am therefore replying to your letter of the 22nd February, with reference to the question of the incorporation of the Tati district within Southern Rhodesia.

* No. 75 in Dominions (South African) No. 1. † 20092/25: not printed.

I have submitted your letter to the High Commissioner, who directs me to say that if the inhabitants of the Tati district now desire again to raise the question of incorporation within Southern Rhodesia, His Excellency will at once communicate to the Secretary of State any representations which may be transmitted to him.

I note from your letter that it is contemplated that the matter should be brought forward by means of a "referendum," and I gather that this procedure has been suggested in consequence of a statement which was made in the House of Commons in June, 1925, to the effect that no referendum had been taken. That statement, however, was made in reply to a direct question whether a referendum had been taken, and need not be regarded as indicating that a referendum is necessary in order again to bring the matter under consideration.

The question could of course be raised by means of a further petition, addressed either to the High Commissioner or to the Secretary of State, or by the adoption of an appropriate resolution at a public meeting, or by any other means which the inhabitants of the district might consider most convenient, and I suggest that one or other of the alternative courses of procedure which I have mentioned would probably be a simpler and more suitable way of raising the question than an attempt at the present stage to hold a referendum.

You will remember that the referendum which was taken in Southern Rhodesia in 1922 was not held until the terms of the draft Constitution, and the basis upon which it was then proposed that that Colony should enter the Union, had been discussed and settled.

I am, &c.,
SHIRLEY EALES,
Acting Imperial Secretary.

D. 4165/27.

No. 6.

SOUTH AFRICA.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 25th April, 1927.)

(Bechuanaland Protectorate.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 8th April, 1927.

WITH reference to my Confidential despatch of the 4th March,* I have the honour to enclose, for your information, a copy of correspondence with Mr. R. McFarlane on the subject of the proposed incorporation of the Tati district within Southern Rhodesia.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 6.

Strathearn, Tsessebe,
23rd March, 1927.

DEAR MR. EALES,

VERY many thanks for yours of the 4th. I note with pleasure that His Excellency would be pleased to forward to the Colonial Secretary resolution passed at a public meeting asking for the incorporation of the Tati Territory with that of Southern Rhodesia.

A day or two ago I was informed that the Colonial Secretary—Mr. Amery—would be in South Africa this winter and I was to ask His Excellency if he would agree to us representing our views and presenting the terms of the proposed resolution to Mr. Amery during his visit, and further if His Excellency could see his way to arranging an interview.

I am also to inquire if His Excellency would prefer that the resolution was passed now, to be forwarded to the Colonial Secretary before his departure for South Africa.

Yours, &c.,
ROBT. MCFARLANE.

Shirley Eales, Esq.,
Imperial Secretary.

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* No. 5.

DEAR MR. MCFARLANE, 7th April, 1927.

YOUR letter of the 23rd March with reference to the question of the incorporation of the Tati district within Southern Rhodesia did not reach me until the 5th instant, and as the High Commissioner is now in the Orange Free State, I have not yet been able to submit it to His Excellency.

No definite information is at present available with regard to a visit to South Africa by the Secretary of State for Dominion Affairs but in the event of such a visit I feel sure that His Excellency would have no objection to representations being made to the Secretary of State by the residents in the Tati district. Any written representations would presumably be transmitted through the usual official channel.

You will appreciate that His Excellency could not say whether a personal interview with the Secretary of State would be practicable until after his arrival.

I do not think that you need regard it as necessary to arrange for a resolution to be passed with a view to its immediate transmission to London, and if it is contemplated that representations should be made to the Secretary of State you might perhaps prefer to postpone taking any further steps in the matter until it is definitely known whether and on what date he will visit South Africa.

Yours faithfully,
SHIRLEY EALES.

R. McFarlane, Esq.

D. 10430/27.

No. 7.

SOUTH AFRICA

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 31st October, 1927.)

(Bechuanaland Protectorate.)
(No. 501.)

SIR, High Commissioner's Office, Cape Town, 10th October, 1927.

WITH reference to previous correspondence regarding the future of the Tati district in the Bechuanaland Protectorate, I have the honour to transmit herewith a copy of a letter in which, before his departure from South Africa, Mr. Amery advised me that he did not see his way to arrange for the transfer of the district to Southern Rhodesia in the near future.

2. I also enclose a copy of a despatch to the Resident Commissioner at Mafeking requesting him to inform the European settlers in the district of this decision.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 7.

DEAR LORD ATHLONE, Cape Town, 24th September, 1927.

THERE is one question arising out of my visit to the High Commission Territories concerning which I feel I ought to write to you before my departure from South Africa.

As you know, I discussed the political future of Tati with a deputation headed by Mr. MacFarlane and was impressed by the arguments they advanced in favour of an early transfer of the district to Southern Rhodesia. I have given very careful consideration to this question and although I feel it may be desirable, before very long, to incorporate the district in Southern Rhodesia, I regret that, in view of the general position in the High Commission Territories, I cannot see my way to arrange for transfer in the near future. I recognise, however, that the interests of the inhabitants are, to a very great extent, bound up with those of their neighbours across the border, and as Bulawayo is the nearest urban centre it is natural that the settlers should turn in that direction for social, educational, and commercial amenities. I should be

obliged, therefore, if, when communicating my decision to the inhabitants, you would also notify them of your intention to ask the Government of Southern Rhodesia to accord them all possible facilities.

Yours sincerely,
L. S. AMERY.

Major-General His Excellency
The Right Honourable the Earl of Athlone,
G.C.B., G.C.M.G., G.C.V.O., D.S.O., &c.

Enclosure 2 in No. 7.

(Bechuanaland Protectorate.)
(No. 1562.)

SIR, High Commissioner's Office, Cape Town, 26th September, 1927.

DURING his visit to the Bechuanaland Protectorate the Secretary of State gave sympathetic and careful consideration to the request for the transfer of Tati to Southern Rhodesia which was made to him by the representatives of the district.

2. I enclose a letter* which I received from Mr. Amery prior to his departure from South Africa from which you will see that, while recognising the force of the arguments submitted, the Secretary of State cannot, in view of the general position in the High Commission Territories, see his way to arrange for transfer in the near future.

3. I am corresponding officially with the Governor of Southern Rhodesia inviting his Government to accord every possible facility to the inhabitants of the Tati district and I propose, in consultation with you, to consider what can be done for them within the Protectorate particularly in regard to education, water-boring, dipping, and the provision of better markets.

4. I should be obliged if you would transmit this despatch and the enclosed letter to Mr. MacFarlane for communication to the inhabitants of the district.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour the Resident Commissioner of
the Bechuanaland Protectorate.

D. 13815/29.

No. 8.

LORDS BUXTON, GLADSTONE, AND SELBORNE to LORD PASSFIELD.

DEAR LORD PASSFIELD, 7, Eaton Place, S.W., 8th November, 1929.

Incorporation of Swaziland in the Union.

ON 1st (? 4th] August, 1926,† we sent a memorandum (in the form of a letter) to Amery, then Secretary of State, in reference to the above. The question, however, was not raised by the Union Government at that time.

It has been recently stated in the Press that Dr. Bodenstein, the Secretary for External Affairs, who is just about to visit England, will probably have some informal conversation with the Dominions Office on the question of the incorporation of Swaziland in the Union. It would thus appear that the question may be raised by the Union Government at an early date.

We desire to be allowed, therefore, to draw your attention to our letter of 1st [? 4th] August, 1926,† which contains our considered views as to the position when, and if, the Union Government raise the question of incorporation.

It does not seem necessary to repeat the first paragraphs of the memorandum, as they appear to us to hold good in the event of an application at any time by the Union Government for incorporation.

The point we desired to make on page 3 of the memorandum, namely, that the Imperial Government, before they accept the proposal for the consideration of transfer, should be in full possession of the native policy adopted by the Union Government and the Union Parliament, appear to us to be equally forcible now as in 1926. It is known, of course, that the Native Bills there mentioned have since been introduced in the House of Assembly and passed by that House. But these Bills

* Enclosure 1 in No. 7. † No. 63 in Dominions (South African) No. 1.

before they can become law require the assent of a two-thirds majority of the House of Assembly and of the Senate sitting together.

It now appears that General Hertzog does not propose to press his Bills at present, in the hope that he may be able to obtain a general agreement on the question, and he proposes to renew his invitation to the Opposition to join in solving the problem. This procedure, he anticipates, will occupy some considerable time.

Meanwhile (as stated in our letter at the bottom of page 3), in our view, the Imperial Government are hardly in a position adequately to judge of the effect of the native policy to the Union as a whole, nor to estimate to what extent it may possibly conflict with the conditions inserted in the Schedule of the Act of Union for the security of the natives and the Protectorate.

This letter is for your information and does not require an answer, but merely an acknowledgment of receipt.

Yours sincerely,
SELBORNE.
GLADSTONE.
BUXTON.
(to whom acknowledge receipt).

II.—MINERAL CONCESSIONS IN THE BECHUANALAND PROTECTORATE.

D. 1297/27.

No. 9.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 7th February, 1927.)

(No. 39.)

SIR, High Commissioner's Office, Cape Town, 20th January, 1927.

WITH reference to my despatch No. 217 of the 5th May last,* I have the honour to enclose, for your information, a copy of a despatch from the Resident Commissioner, Mafeking, on the subject of the prospecting rights of the Balkis Company in the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 9.

(26.)

Resident Commissioner's Office, Mafeking,
12th January, 1927.

MY LORD,

WITH reference to your despatch No. 611, of the 1st May, 1926, and previous correspondence regarding the rights of the Balkis Company, I have the honour to transmit herewith, for Your Excellency's information, a copy of a minute from the Acting Magistrate at Kanye regarding the anxiety felt by the Bangwaketse in connexion with the two Concessions held by that Company.

A copy of my reply thereto is also enclosed.

I will, as soon as circumstances permit, send a European Officer to the Moselebe Valley, and a copy of his report will be transmitted to Your Excellency in due course.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

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* D. 5584/26: not printed.

Headquarters reference:—J. 463.
Kanye reference, which please quote:—P 19.
The Government Secretary (through Captain Reilly).

MAFEKING.

THE Chieftainess and her people are very worried about the Balkis Company's agreement with them and have been to see me many times on the subject. I have explained to them that, provided prospectors comply with the terms of the agreement, nothing can be done. They have, however, asked me to refer the matter to you.

(1) They inform me that some years ago they used to receive £800 per annum, now they only get £120, none of them know why and when the reduction took place. Is there perchance any correspondence in Headquarters or Gaberones on the subject, please?

(2) Mr. P. M. Fincham has pegged ground on the Moselebe River Valley and is starting to wash for diamonds on the 10th instant. The natives tell me, and I also heard when I was at Macbeu, that several Dutchmen intend coming at the same time. If diamonds are found, and it seems probable that this will happen, there will be a rush and the Chieftainess fears for the game and damage to grazing lands with the possible influx of people and their transport. I told her that we would control the importation of animals and arms and advised her to place some reliable men in the vicinity who would report to her if any transport or arms and ammunition were introduced, or game shot, and that I would take the necessary action if the law was broken.

She asks that a Government official be sent down there with her representative to see if the pegging is in order and the prospectors complying with the terms of the licences.

As you are aware the agreement says "No person can prospect or dig within 200 yards of any village, kraal, house or hut, nor upon any land required for the purpose of irrigation nor upon any land under cultivation without the permission of the Chieftainess." Could you tell me does that include within 200 yards of a well or dam, and if a man "pegged" so:—

and a hut or well, etc., etc., was in the centre, would it be in order provided he did not dig within 200 yards of the hut, etc., etc.

The area is that to which he is entitled by his licence.

I have informed the Chieftainess that no one can take the water from private dams or wells in the valley, without her first giving her permission to the owner.

B. CRONEES,
Acting A.R.M.,
Nwaketse District.

Kanye,
7th January, 1927.

J. 463.

The Acting Resident Magistrate,
Nwaketse District (through C. S. and R. M. Lobatsi).

Referring to your minute of the 7th January, the Chieftainess should be told:—

(a) That each of the two Concessions granted by Gaseitsiwe in October, 1887, and March, 1888, to Messrs. Woolley, Nicolls, and Riesle, and to Mr. John Williams, respectively, were acquired by the Balkis Company, Limited;

(*b*) that each of these Concessions gives the right to select a mining area or areas not to exceed in the aggregate four hundred square miles; but that there can be no prospecting, or digging for precious stones and minerals, in any road or within 200 yards of any village, kraal, house or hut, or upon any land under cultivation, without her consent, and payment of compensation to those about to be disturbed, should she give her consent thereto;

(*c*) that, although the only payment which she can at present claim under each Concession is five shillings a month, yet the Company appears to have paid to the late Chief Bathoen £800 per annum, to which he was really not entitled until the Company had selected 800 square miles for mining purposes, i.e., £1 per square mile per annum, and that in 1909 a compromise was effected under which the sum of £120 per annum was to be paid to the Chief pending the demarcation of any specific areas for mining purposes;

(*d*) that as soon as such areas are demarcated, she, as Chieftainess of the Bangwaketse, will be entitled to claim, instead of £120, £1 per annum in respect of each square mile selected for mining purposes by the Company, and also 2½ per cent. upon the gross value of all precious stones and minerals found by the Company in any of the areas marked off;

(*e*) that, so far, *prospecting only* is being carried on in the Bangwaketse Reserve; that regular mining operations cannot take place until the Company has selected and marked off a mining area or areas, and that, until the Company does so, I do not anticipate the rush she fears;

(*f*) that I will, at an early date, send a Police Officer to the Moselebe Valley with her representative, to see and report to me what is going on there.

As regards your questions:

Wells and dams are not mentioned in the two Concessions, but if there is a proper road to a well or dam, no prospecting, etc., could take place within 200 yards thereof without her permission, and, if there is a hut in an area marked off for prospecting or for mining operations, no prospecting or mining could be carried on within 200 yards of it and within 200 yards of the road leading thereto.

As regards water rights, both Concessions have a clause granting to the Company such wood, water, and other easements as may be necessary for the working thereof; but, in my opinion, this could not be held to confer on the Company the right to deprive any of the Bangwaketse of the use of their wells. It should (I think) be construed as meaning that the Company is entitled to such water as it may find in river beds and pools, or by sinking for it.

J. ELLENBERGER,
Resident Commissioner.

Mafeking,
11th January, 1927.

D. 6336/26.

No. 10.

SIR C. T. DAVIS (DOMINIONS OFFICE)
to
MR. D. O. MALCOLM (BRITISH SOUTH AFRICA COMPANY).

[*Answered by No.* 11.]

MY DEAR MALCOLM, Downing Street, 17th February, 1927.

As I promised you at our Meeting on the 11th February, I am sending you a copy of the revised form of the Khama Concession* which the High Commissioner for South Africa discussed with Sir Drummond Chaplin: the passages which it is proposed to omit are enclosed in brackets and the additions are underlined. The High Commissioner explains that he has not consulted his Legal Adviser regarding the wording of the draft and he might therefore have further alterations in phraseology to propose.

As I told you, Sir Drummond Chaplin stated that, generally, he was prepared to accept the amendments embodied in the draft. He raised, however, two points, viz., whether the Bamangwato Reserve represented the extent of the Chief's country at the time of the signing of the Concession, and also whether it would be possible to provide that the duty on mining machinery should not exceed the duty now charged

* Enclosure 2 in No. 58 in Dominions (South African) No. 2.

in the Union or Southern Rhodesia. I discussed these points with you and understand that you agree that they can be dropped.

I also enclose a copy of the extract from the High Commissioner's despatch* setting out certain alterations in the Northern Rhodesia Mining Law, which he suggests would be necessary in adapting it to the Bechuanaland Protectorate. You will see that the High Commissioner's observations are of a preliminary character and that the law has not been examined in detail. I mentioned to you in connexion with the High Commissioner's observation on Section 4 that it might be found desirable not to throw open the whole of the Bamangwato Reserve to prospecting at once, but to apply the Proclamation to it by instalments, and that this point would have to be borne in mind in considering the wording of Section 2 of the Draft Concession. You will appreciate that an arrangement of this kind may be found necessary in order to make the scheme acceptable to the Chief.

With regard to the question of special grants it is, I understand, agreed between us that the adoption in the Bechuanaland Protectorate of the system under which the Company obtain special consideration for such grants is not to be regarded as prejudicing the position of the Secretary of State in any way in relation to the question which has arisen in Southern Rhodesia regarding such grants. I think it will be necessary to include in the proposed Bechuanaland Protectorate law definite provisions dealing with the power of the owner of the mining rights to make such special grants, with the approval of the High Commissioner, as the method by which the matter is dealt with in the Northern Rhodesia law does not seem altogether appropriate in the circumstances of the Bechuanaland Protectorate. There is also the point that if prospecting should be carried out mainly by way of special grants, the Bechuanaland Protectorate Administration would apparently, under the Northern Rhodesia system, obtain practically no mining revenue until mining actually commenced. I suggest, therefore, that provision should be made for the payment to the Administration by the holder of a special grant of an annual licence fee based on the area of the grant. I see from your correspondence with Mr. Moffat that you were willing to make an arrangement of this kind in Southern Rhodesia.

You will no doubt let me have in due course your observations on the above points and on the High Commissioner's suggestions.

Yours sincerely,
C. T. DAVIS.

D. 4580/27.

No. 11.

MR. D. O. MALCOLM (BRITISH SOUTH AFRICA COMPANY)
to
SIR C. DAVIS (DOMINIONS OFFICE).

Rhodesia House, 2, London Wall Buildings, London, E.C.2,
4th May, 1927.

MY DEAR DAVIS,

WE hear from South Africa that Clifford, the Imperial Secretary, is on leave and is expected to arrive in London about the 15th May.

Could you ask someone to let me know when he arrives what his address in London will be? His absence from South Africa makes it difficult for our representatives there to get on with the discussion of the Bechuanaland Protectorate Mining question, about which you wrote to me on the 17th February,† and I think that it might save time if I had a talk to him while he is over here.

Meanwhile I enclose a copy of a memorandum of mine of the 9th March upon your letter to me of the 17th February and its enclosures. Sir Drummond Chaplin at Cape Town has handed to the Acting Imperial Secretary a copy of this memorandum together with copy of your letter of the 17th February and its enclosures, and has suggested that a draft Mining Proclamation for the Bechuanaland Protectorate should be prepared by the High Commissioner's Office. I think we shall all agree that discussion could best proceed on the basis of a complete draft.

Yours sincerely,
DOUGAL O. MALCOLM.

* No. 58 in Dominions (South African) No. 2). † No. 10.

Enclosure in No. 11.

BRITISH SOUTH AFRICA COMPANY.

MEMORANDUM.

I. *The proposed revised form of the Khama Concession.*

(*a*) This is generally in accordance with what has been contemplated in previous negotiations. In regard to clauses 4, 5 and 7, while it is no doubt proper that the exercise of the rights of the grantees mentioned therein should be subject to the conditions and restrictions suggested it would seem better that power by regulation to impose such conditions and restrictions on the miner, not only in the Bamangwato Reserve, but anywhere in the Protectorate where they may be thought necessary, should be taken in the Proclamation. This would ensure due publicity and notice being given of the restrictions with which the miner will have to comply, and would make it unnecessary to deal with the matter in the concession.

A further small point arises in clause 7; the new words introduced in lines 8 and 9 seem unnecessary. These words would make the Resident Commissioner the judge of what buildings were necessary for carrying on prospecting and mining operations. He is hardly likely to be a good authority on this subject, and anyhow it is needless to make him responsible for deciding upon it since if the suggestion made above be adopted such conditions and restrictions on the taking of land for mine buildings as may be necessary for the protection of the natives in the full and sufficient enjoyment, use and occupation of their reserve can be made by regulation. And it is this point, not the question whether a particular building is necessary for the miner, that really concerns the Resident Commissioner.

(*b*) As to Sir D. Chaplin's two points, paragraph 2 of Sir C. Davis's letter of 17th February.

(*i*) I do not think it is worth while pursuing the point that the area of the territory of which Khama was Chief in 1893 may have been larger than that of the present Bamangwato Reserve. It is, I think, true that the former included, whereas the latter does not include, the Tuli Block, but so far as I know that is the only difference now ascertainable; and we have the mineral rights in the Tuli Block as it is. In any case as we are discussing a new grant from the Bamangwato Chief in substitution for the old one, the Bamangwato Chief will only be able to grant what, on the cancellation of the old concession, he will have got—viz., mineral rights in the Reserve as now established

(*ii*) Similarly, in clause 5, while Khama might have been able in 1893 to allow importation into his country of machinery, &c., free of duty, the Bamangwato Chief cannot now by concession undertake obligations in regard to limitations of customs duties, because the Bechuanaland Protectorate has to charge the same duties from time to time as the Union of South Africa. The matter is not in the Chief's hands. I think we must rely on the Union of South Africa Customs Union Tariff rates of duty not being such as seriously to hamper mining in the Protectorate. In any case only the Union (if anyone) could effectively safeguard this point, and it would be useless to ask them to bind themselves for all time.

(*c*) The twenty-five years for which the new concession is to be granted should run from the date on which the British South Africa Company is allowed to commence prospecting and mining operations in the Bamangwato Reserve under the Proclamation and Regulations to be promulgated. Otherwise if there were long delay between the granting of the new concession and the promulgation of the Proclamation and Regulations the twenty-five year period would, in effect, be *pro tanto* diminished.

(*d*) An observation is relevant here on the High Commissioner's note on section 4 of the Northern Rhodesia mining proclamation, and Sir C. Davis's comment thereon. The latter mentions that the wording of clause 2 of the draft concession is affected.

It is no doubt necessary to provide for the application of the proposed Protectorate law to such areas as may from time to time be notified in the *Gazette*. There might be parts of the Protectorate which it was not thought desirable to throw open to prospecting or mining at all, *e.g.*, native reserves in which no concession had been granted, or areas covered by concessions which for some reason or other could not be modified, as it is suggested that our Bamangwato Concession should be modified, so as to accord with the law which contemplates general prospecting only for a period of twenty-five years.

The wording of clause 2 of the draft amended Bamangwato Concession would be affected if it was in contemplation that the whole Bamangwato Reserve should not be thrown open to prospecting at once, but that the proposed law should be applied to it only by instalments. This, however, would be from our point of view very undesirable. The total area of the Bamangwato Reserve is approximately 50,000 square miles, not too large to form the subject of a single special grant to a properly-equipped prospecting

Company. If the proposed law were applied to the Bamangwato Reserve by instalments and these were comparatively small the value of the Concession to us would be very materially reduced. And the Concession itself would have to be altered so as to allow prospecting to go on for twenty-five years in any portion as from the date of its being thrown open; and with reference to the last words in clause 1 of the draft amended Concession, we certainly ought not to pay more than a proportion of the £25 per month equal to the proportion of the whole Reserve at any time brought under the proposed law.

II. *The High Commissioner's observations on the adaptation to the purposes of a Bechuanaland Protectorate Mining Proclamation of certain sections of the Northern Rhodesia Mining Law.*

It is very difficult to discuss these in any detail in the absence of a complete draft Proclamation, but the following comments may be made:—

(*a*) The third paragraph of the High Commissioner's observations on section 6 has to be read along with his observations on section 27 (1) and section 59.

The High Commissioner's view seems to be that the holder of a prospecting licence in the Bechuanaland Protectorate shall be in the same position as he is under the Northern Rhodesia Law until he has established a mining location, but that thereafter, in addition to being under the obligations of sections 24-30 of the Southern Rhodesia Law in regard to protection of claims held under prospecting licence, he shall at the end of two years have to pay a substantial rental to be increased on a steeply graded scale for each subsequent year until the location is surrendered or a prescribed maximum is reached, so long as his location is not being worked on a scale that in the opinion of the Resident Commissioner would justify its retention by the owner as a mining location. Apparently, though the High Commissioner's language is not quite clear, this rental would not be payable if the location was being worked to the satisfaction of the Resident Commissioner, but claim licence fees would be payable on any mining location whether worked for profit or not, after two years. The High Commissioner's idea would seem to be to get rid of the distinction made in the Northern Rhodesian law between holding claims under a prospecting licence and working for profit under claim licence and to substitute an obligation, on pain of payment of a heavy and steeply-graded rental, to work to the satisfaction of the Resident Commissioner, whether such work be prior to and preparatory for flotation and working for profit or subsequent thereto.

The High Commissioner's proposal is that the rental should be *per acre* of a mining location. If his proposal were adopted it would probably be better that the rental should be per block of claims included in the location, but this is a detail. The proposal itself seems open to serious objection, assuming, in the absence of information as to the figures of rentals proposed, that they are intended to be such as to place a heavy burden on the holder of a block of claims which is not being worked on a scale such as to satisfy the Resident Commissioner.

The proposal will throw a very difficult and invidious responsibility upon the Resident Commissioner, who can hardly be expected to be a mining expert, and it will be very discouraging indeed to the investment of money in mining enterprise. People are not likely to put money into so speculative an undertaking as prospecting and mining in a new country unless they know beforehand exactly how they will stand so far as the law is concerned in the event of their making discoveries of minerals. This they would know if the Northern Rhodesian precedent were followed and a definite scale of royalties on production were laid down; but they would not know it under the High Commissioner's proposal, because they could never feel sure in advance what scale of operations would be sufficient to satisfy the Resident Commissioner. It would seem that the danger of mining locations being left unworked indefinitely would be sufficiently guarded against by the requirement of prescribed amounts of work or prescribed payments in order to obtain "Inspections" of claims held under prospecting licence and not yet worked for profit and thereafter by the obligation to pay claim licence.

In the case of a base mineral location especially it may happen that after working for profit has begun and been continued for some time, to the satisfaction of the Resident Commissioner let us assume, a fall in the price of the mineral may necessitate closing down until the price recovers and working for profit can begin again.

In such a case would the rental then become payable? The High Commissioner's proposal as a whole seems calculated, by adding to the risks and uncertainties in any case inseparable from prospecting and mining, the additional risk of what the Resident Commissioner's view may be of the scale of operations being carried on, in circumstances which cannot be foreseen when the individual or company embarks his money in prospecting, to discourage enterprise altogether. It would seem much better and safer to follow the Rhodesian precedent which has, on the whole, been found to work in practice.

The foregoing relates to the High Commissioner's proposal as it would affect areas thrown open to prospecting and mining where the Crown is the owner of the mineral rights.

Where, as in the case of the Bamangwato Reserve, somebody else (The British South Africa Company) has the mineral rights the proposal does not seem workable. The idea is that the holder of a mineral location must work it to the satisfaction of the Resident Commissioner, *or* pay a heavy rental, *or* abandon it and risk seeing somebody else peg it. Suppose we ourselves were exploiting our own concessionary area; there would be no penalty in our paying a rental to ourselves as owners of the mineral rights, and if we abandoned a mineral location no one else would have the right as against us to re-peg it.

And what is true of us would be true of our assigns.

(*b*) *Royalties.* It would be preferable to adopt the scale of royalties which the Company has under consideration for Northern Rhodesia, but which is not yet finally formulated.

But presumably a scale of royalties prescribed in the law would only be applicable to areas thrown open by the Crown or any other owner of mineral rights to general prospecting and mining under the ordinary provisions of the law. If a private owner of mineral rights—like the British South Africa Company in the Bamangwato Reserve—chooses not to throw his area open to general prospecting, but either to work it himself, or to deal with it by way of special grant to particular assigns, there seems no reason from the point of view of the Crown to prevent him taking his consideration in any form which he can arrange with his assigns and no reason to bind him down to any particular scale of royalty.

(*c*) *Special Grants.* We can of course agree that nothing arranged in regard to Special Grants in the Bechuanaland Protectorate should prejudice the Secretary of State's position in regard to the Special Grants question in Southern Rhodesia.

An annual licence fee based on the area of a special grant made by a private mineral owner might be charged and shared with the Administration to compensate the Administration for the loss of such mineral revenue as would accrue to it if the area were thrown open to general prospecting, but not otherwise. Apart from this the Administration ought not to concern itself with the consideration which the grantee pays for the grant. But as soon as the owner of the mineral rights or his grantee begins working for profit he should establish a mining location and pay claim licence fees as provided in section 62 of the Northern Rhodesia Mining Proclamation.

It would be of the greatest help and would greatly facilitate and expedite the discussion of this problem if the High Commissioner, after considering the foregoing observations, would cause a complete draft Mining Proclamation for the Bechuanaland Protectorate to be prepared. The Company would be only too glad to help so far as it can by offering its comments or criticisms on such draft—which, it is submitted, should deal with everything that has to be dealt with from the point of view of peace, order and good government wherever mining is carried on in the Protectorate, and with the rights and obligations *inter se* of the prospector or mining location holder on the one hand and of the owner of the mineral rights on the other wherever an area is thrown open to general prospecting under the Proclamation, but save as suggested above under II (*c*) and subject, of course, to his complying with everything in the law that relates to peace, order and good government, should not restrict the use which a private owner may make of his mineral rights if he does not throw his area open to general prospecting and mining but elects to work it either himself or through special grantees.

D. D. MALCOLM.

9th March, 1927.

D. 4705/27.

No. 12.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 9th May, 1927.)

(No. 215.)

High Commissioner's Office,
Cape Town, 21st April, 1927.

SIR,

WITH reference to my despatch No. 39 of the 20th January,* I have the honour to transmit herewith, for your information, a copy of a despatch from the Resident Commissioner of the Bechuanaland Protectorate regarding an agreement entered into by Mr. J. van Praagh with the Balkis Company in respect of the two mineral concessions held by that Company. I also enclose a copy of my reply.

* No. 9.

13

2. I may mention that Mr. A. D. Drake, Assistant Secretary of De Beers Consolidated Mines, called at my Office on the 5th instant and stated that information had reached his Company to the effect that a Mr. J. van Praagh and a Mr. Ronaldson had acquired an interest or option in minerals in the Bangwaketsi Reserve. He said that De Beers was interested under its arrangements with the British South Africa Company as regards the latter Company's mineral rights in the Protectorate and that he was anxious to know what the position was. The Acting Imperial Secretary replied that the High Commissioner had not received recent information of any extensive prospecting or mining activities under any concessions in the Bechuanaland Protectorate, and that if Mr. van Praagh and his friend had acquired any mineral rights in the Bangwaketsi Reserve they had probably done so by arrangement with the Balkis Company which was the owner of the Gaseitsiwe and Kanye Concessions.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 12.

Resident Commissioner's Office,
Mafeking, 14th April, 1927.

MY LORD,

WITH reference to the second paragraph of your despatch No. 83 of the 20th January, regarding the anxiety felt by the Bangwaketse in connexion with the two Concessions held by the Balkis Company, Limited, I have the honour to inform Your Excellency—

(*a*) that the Magistrate at Kanye reported on the 22nd January that Mr. P. M. Fincham, who was prospecting for diamonds in the Moselebe valley, had found nothing and had left the Bangwaketse Reserve;

(*b*) that on the 1st April a Mr. Joseph van Praagh called at my office and told me that he had entered into an agreement with the Balkis Company, Limited, under which he had acquired the sole and exclusive option for a period of two years to prospect for precious stones and minerals in the area covered by the two Concessions held by the Balkis Company, Limited, and also the option to purchase all the rights and interests of that Company in the said area. I advised him to see the Chieftainess of the Bangwaketse and explain his business to her, and I also gave him a letter of introduction to the Magistrate at Kanye in which I asked the latter to arrange an interview between Mr. van Praagh and the Chieftainess.

2. I enclose for Your Excellency's information a copy of the Agreement which Mr. van Praagh showed me. I understood him to say that it had been modified to a certain extent—he probably meant to the extent shown in a letter on the subject which I have since received from Mr. D. P. C. Blair, of Johannesburg, a copy of which is also herewith enclosed.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

AN AGREEMENT made the seventeenth day of February One thousand nine hundred and twenty-seven between Balkis Limited whose registered office is situate at 274 Gresham House Old Broad Street in the City of London (hereinafter called "the Grantors") of the one part and Joseph van Praagh of Halton House 20/23 Holborn in the County of London (hereinafter called "the Grantee") of the other part Whereas the Grantors are the Lessees of or otherwise entitled to mining rights over the land situate in the Bechuanaland Protectorate and coloured pink on the plan* attached hereto (hereinafter referred to as "the said Area") Now it is hereby agreed as follows:—

1. In consideration of the sum of five shillings to the Grantors now paid by the Grantee (the receipt whereof the Grantors hereby acknowledge) and of the agreements on the part of the Grantee hereinafter contained the Grantors hereby

* Not reproduced.

grant to the Grantee the sole and exclusive option (subject as hereinafter mentioned) to call upon the Grantors for a licence to prospect search for get win and raise precious stones precious and base metals and any minerals in and under the said area subject to and upon the terms of the Leases under which the Grantors now hold the said area during the respective residues of the periods of the said Leases.

2. Such Licences shall be subject to all existing prospecting and other rights which may already have been granted by the Grantors over the said area and any part thereof but the Grantors shall not grant any further Licences in respect of the said area or any part thereof during the currency of the said option.

3. The Grantee shall forthwith proceed to thoroughly prospect such portions as he may consider advisable of the said area for precious stones and minerals and the Grantee shall during the period of six calendar months calculated from the First day of April One thousand nine hundred and twenty-seven expend an aggregate sum of One thousand pounds in prospecting equipment and prospecting and development work thereon and thereafter until the expiration or sooner determination of the said option as hereinafter mentioned the Grantee shall expend in such prospecting and development work as aforesaid an average sum of not less than Two hundred pounds per calendar month. If the Grantee shall have expended an aggregate sum of not less than One thousand pounds as aforesaid during the said period of six calendar months he shall be entitled by notice in writing to the Grantors to determine this Agreement and in such case the option hereby granted shall be void and of none effect. At the expiration of every six calendar months during the currency of the said option the Grantee shall furnish to the Grantors particulars of the monies expended by him together with such reasonable vouchers therefor as shall enable them to check the same. If the Grantee shall fail to expend the monies agreed to be expended by him in any of the periods aforesaid the Grantors may by notice in writing to the Grantee determine the said option together with the option granted by Clause 10 hereof but any such determination shall be without prejudice to any rights of the Grantors which may have accrued prior thereto.

4. The Grantee shall have the right during the currency of the said option to get and raise precious stones precious and base metals and any minerals in and under the said area but in such case he shall keep proper accounts thereof and at least once in every six calendar months he shall furnish full particulars thereof to the Grantors and shall pay to them half the net profits accruing thereon calculated in manner hereinafter mentioned.

5. Before proceeding to win any minerals metals metallic ores or precious stones on any part of the said area the Grantee shall peg out and effectually demarcate such section or sections of the said area as the Grantee or his assigns shall have selected for that purpose and such section or sections shall be clearly beaconed off on the ground and indicated by a diagram or diagrams to the reasonable satisfaction of the Grantors or their representatives. In the event of any sub-licences being granted by the Grantee to other prospectors the holders of such sub-licences shall be subject to the same obligation and the Grantee shall not allow any mining or winning of minerals metals metallic ores or precious stones by any person on any ground which has not previously been effectually demarcated.

6. Any minerals metals metallic ores or precious stones found while the Grantee is engaged in general prospecting shall be the property of the Grantee subject to the provisions of this Agreement as to the division of profits.

7. Subject as aforesaid the said option shall be exercisable at any time within two years from the said First day of April One thousand nine hundred and twenty-seven by the Grantee giving to the Grantors notice in writing of the exercise thereof.

8. If the Grantee shall exercise the said option the Grantors shall grant to the Grantee such Licence as aforesaid for the whole remaining period covered by the said Leases respectively and such Licence shall provide that the net profits to be made by the Grantee or his assigns shall be divided equally between the Grantors and the Grantee. In ascertaining such profits the following rules shall have effect:—

(*a*) If the Grantee or his assigns shall with the consent of the Grantors assign his or their rights under the said Licence or any part thereof any capital consideration whether in cash shares or otherwise payable or accruing to the Grantee or his assigns on any such assignment after deducting all commission expenses and other payments made thereout or in connexion therewith and all licence monies rents royalties or other payment which may be payable to the Grantee or any such assignee after making such deductions as aforesaid shall be treated as net profits and divided equally as aforesaid.

(*b*) If the Grantee or his assigns shall himself or themselves develop and exploit any part of the said area the net profits of such development and exploitation shall be divided equally as aforesaid.

(*c*) Each of the parties hereto shall bear and pay an equal half part of the head rents and royalties payable by the Grantors in pursuance of the terms of the respective Leases under which they hold the said area namely Two and a half per centum on the values of all precious stones and minerals and One pound per square mile of any area pegged out for mining.

9. The said Licence shall be prepared by the Grantors' Solicitors and shall contain all such clauses as are usual in Licences of a like nature and a proviso entitling the Grantors to determine the Licence on the bankruptcy or liquidation of the Grantee or his assigns or on a breach of any of the covenants on the part of the Grantee therein contained.

10. The Grantee shall also have the sole and exclusive option such option to be exercised within Twelve calendar months from the First day of April One thousand nine hundred and twenty-seven by Notice in writing to the Grantors to purchase all the rights and interests of the Grantors in the said area for the sum of Seventy-five thousand pounds. If such option shall be exercised the purchase shall be completed within one calendar month after the date of such exercise and as from that date all liabilities of the Grantee under the provisions of this Agreement (except in respect of precious stones and minerals gotten prior to the exercise of this option to purchase) shall cease.

11. Any Notice hereunder may be delivered personally or given by registered letter addressed to the registered office of the Grantors and to the Grantee at his last known place of business in London and shall be deemed to have been delivered in the ordinary course of post.

12. This Agreement shall be construed according to the Law of England.

13. If any dispute or difference shall arise in connexion with the said Licence or the clauses to be inserted therein such dispute or difference shall be referred to a Barrister of at least ten years' standing to be nominated by the President of the Law Society under the provisions of the Arbitration Act 1889 or any statutory modification or re-enactment thereof and his decision shall be final and binding on both parties.

In witness whereof the Company has caused its Common Seal to be hereunto affixed and the said Joseph Van Praagh has hereunto set his hand and seal the day and year first above written.

The Common Seal of Balkis Limited was hereunto affixed in the presence of:—

L.S.

REG. TAYLER,
H. L. WATKINS,
W. J. HEARN, Secretary.

D. P. C. Blair,
Chartered Secretary,
Incorporated Accountant.
23, Aegis Buildings, Loveday Street,
Johannesburg, 9th April, 1927.

SIR,

Balkis Ltd.—Bangwaketsi and Kanye Concession.

I HAVE to inform you that Balkis Ltd. have given exclusive prospecting rights on that portion of the Concession extending from the Southern Boundary northwards to an imaginary line crossing the concession ten miles south of Kanye from due east to due west to:—

Mr. Joseph van Praagh,
of 2, Cheapside,
Kimberley.

I am, &c.,
D. P. C. BLAIR.

The Resident Commissioner,
Bechuanaland Protectorate,
Mafeking.

Enclosure 2 in No. 12.

(No. 649.)

High Commissioner's Office,
Cape Town, 21st April, 1927.

SIR,

I HAVE the honour to acknowledge the receipt of your despatch No. 224 of the 14th April regarding an agreement entered into by Mr. J. van Praagh with the Balkis Company in respect of the two mineral concessions held by that Company.

The Magistrate will presumably keep you informed of any prospecting operations or other mining activities in the Bangwaketsi Reserve, and you will doubtless advise me from time to time as to the position.

I enclose herewith a copy of a despatch under cover of which I have forwarded to the Secretary of State a copy of your despatch under reply.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

D. 5868/27.

No. 13.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 12.7 p.m., 8th June, 1927.)

TELEGRAM.

[*Answered by No. 14.*]

8TH JUNE. My despatch of 16th July, 1926, Confidential.* I am informed by the Resident Commissioner, Bechuanaland Protectorate, that Chief of Bamalete has reported arrival in his Reserve of man named Ranou, who announced his intention of prospecting for minerals under the authority granted by Balkis Company, and that notwithstanding remonstrance of Chief he persists in going on with work.

Resident Commissioner asks for telegraphic instructions, and in the meanwhile has directed Magistrate to watch events with a view to preventing any undue interference with natives or their property or any breach of the peace.

I presume that no action has been practicable on the lines suggested in my despatch under reference and that if risk of litigation is to be avoided no obstacle should be placed in the way of prospecting. I should, however, be glad of instructions. Early reply requested.—ATHLONE.

D. 5868/27.

No. 14.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent, 12.25 p.m., 10th June, 1927.)

TELEGRAM.

CONFIDENTIAL. Your telegram 8th June.† It has not been found possible yet to enter into any negotiations with Balkis Company and for the time being it seems necessary to act on assumption that the Company's rights under these concessions extend to the Bamalete Reserve.—AMERY.

D.6020/27.

No. 15.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 13th June, 1927.)

(No. 269.)

High Commissioner's Office, Cape Town, 25th May, 1927.

SIR,

WITH reference to my despatch No. 215 of the 21st April,‡ I have the honour to enclose, for your information, a copy of a despatch from the Resident Commissioner, Mafeking, on the subject of prospecting in the Bangwaketsi Reserve, Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

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* No. 59 in Dominions (South African) No. 2. † No. 13. ‡ No. 12.

Enclosure in No. 15.

(275.)

Resident Commissioner's Office, Mafeking, 17th May, 1927.

MY LORD,

WITH reference to your despatch No. 649, of the 21st April, and previous correspondence regarding the Balkis Company, Limited, I have the honour to enclose for Your Excellency's information an extract from a minute received from the Resident Magistrate at Kanye in reply to an enquiry as to whether there was any truth in a report which recently appeared in the "Mafeking Mail" to the effect that diamonds had been found in the neighbourhood of Kanye.

I have, &c.,
J. ELLENBERGER,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

EXTRACT FROM A MINUTE DATED 3RD MAY 1927, BY RESIDENT MAGISTRATE, KANYE, TO GOVERNMENT SECRETARY, MAFEKING.

* * * * * * * * * * *

No diamonds have, so far as I am aware, been found in this District. I did hear a rumour to that effect, and I thereupon asked the representative of Mr. van Praagh, and he denied that any diamonds had been found. I have told him that such diamonds as are discovered must be registered.

I visited the place where Mr. Voget, the local representative of Mr. Van Praagh, is digging, recently, and nothing had been found. They were preparing to move to some other place.

Mr. R. Rowland has discovered asbestos in good quantities and of excellent quality, and I understand he is negotiating with certain Mining Houses for the sale of his option. I spoke to Mr. Rowland about it, and he informed me that it was an excellent proposition which could, if worked to capacity, employ 1,000 natives. His negotiations should terminate in the near future, and it then remains to be seen whether the asbestos will be worked or just held.

* * * * * * * * * * *

D. 6787/27.

No. 16.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 4th July, 1927.)

(Confidential.)

High Commissioner's Office, Cape Town, 13th June, 1927.

SIR,

WITH reference to my telegram of the 8th June* and your reply,† I have the honour to enclose for your information a copy of correspondence with the Resident Commissioner, Mafeking, on the subject of prospecting in the Bamalete Reserve, Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 16.

(Confidential)

(No. 303.)

Resident Commissioner's Office, Mafeking, 3rd June, 1927.

MY LORD.

WITH reference to your Confidential despatch No. 1142 of the 16th July, 1926, and previous correspondence, I have the honour to transmit herewith a copy of a letter received from Seboko Mokgosi, Chief of the Bamalete Tribe, in which he states that a Mr. A. A. Ranou recently arrived in his Reserve and informed him that he was

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* No. 13. † No. 14.

authorised by the Balkis Company, Limited, to prospect for minerals there, and that in spite of his (the Chief's) remonstrances he persists in going on with his work, having all the necessary machinery and labour with him.

Seboko wishes to know what he is to do in the matter, and I should be obliged if Your Excellency would be so good as to instruct me by telegraph.

Meanwhile, I have requested the Magistrate to keep a careful watch upon events with a view to preventing any undue interference with the natives or their property or any possible breach of the peace.

I have, &c.,
C. L. O'B. Dutton,
In the absence and by direction of the
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

Sir, Chief's Office, Ramoutsa, 31st May, 1927.

With further reference to my letter of the 7th August, 1923, and your reply as herewith attached, I have the honour to bring to your notice that a certain gentleman by the name of Mr. A. A. Renou came to my Reserve about the early days of month and informed me that he had come to prospect for minerals in the Bamalete Reserve and that he had authority from the Balkis Company, Limited, who contended that they hold the concession for the mineral rights of this Reserve, which concession was granted them by the late Chief Seepapitso, of the Bangwaketse. I told him my Reserve and the Bangwaketsi Reserve are two different Reserves under two different Chiefs, that to satisfy himself he must come to the Office of the Resident Magistrate for this District for information, that the only Company I know of is the British South Africa Company, which has been granted preference by the tribe and I. He refused to come to the Office. He then left my Reserve stating he was going to his Company for further information.

He again arrived yesterday. He has a map which he says has been sent him by the Balkis Company, and that he has now come to prospect. He has with him all the necessary machinery, implements and four men for his work. I reported this to the Non-Commissioned Officer. Please act in this matter or let me know what I must do as the man is determined to go on with the work and even threatens to demand the expense of his previous return journey from me. Please let me have your instructions.

With greetings, &c
Seboko Mokgosi,
Chief of the Bamalete.

The Resident Magistrate,
Gaberones.

Dear Sir, Chief's Office, 30th May, 1927.

I regret to express my inability to say to you that you must prospect in the Bamalete Reserve. I have written to the Resident Magistrate about you and your work. Personally, I have no authority to sanction anyone even if it were the British South Africa Company of which I know something about.

Yours faithfully,
Seboko Mokgosi,
Chief of the Bamalete.

A. A. Renou, Esquire,
Ramoutsa.

My Friend, Resident Magistrate's Office, Gaberones, 9th August, 1923.

In reply to your letter of 7th instant, I have to inform you that the following is a copy of the minutes I sent to the Government Secretary, on the 9th March, after discussing the question of the payment of the subsidy to you by the British South African Company and the matter of mineral rights in your Reserve.

"The Acting Government Secretary,
Mafeking.

I went to Ramoutsa on the 6th instant and explained the contents of enclosure 78 to Seboko who then informed me that he wished to consult his headmen before giving any definite reply. He came to see me to-day and stated that the Bamalete cannot accept the proposal of the British South Africa Company. They consider 1 per cent is insufficient but in consideration of the Company

agreeing to continue the annual payment of £50 they are prepared to give them their assurance that they will not grant a preference to anyone else. The Chief added that if at any time the Company wish to prospect in his reserve the Bamalete will be willing to allow them to do so provided they offer terms which are acceptable to them and the transaction is sanctioned by the Secretary of State.

E. O Butler,
Resident Magistrate."

Gaberones.
9th March, 1923.

With greetings, &c.,
E. O. Butler,
Resident Magistrate.

The Chief Seboko,
Chief of the Bamalete,
Ramoutsa.

Enclosure 2 in No. 16.

Copy of Telegram.

From High Commissioner Cape Town, to Resident Commissioner, Mafeking.

10th June, 1927, Confidential. My telegram of 8th June. I have received following telegram dated 10th June from Secretary of State: *Begins.* It has [*See* No. 14] Reserve. *Ends.*

Magistrate should be directed to inform Chief that persons prospecting under authority of Balkis Company should not be interfered with. Magistrate should, of course, continue to be guided by the instructions mentioned in last paragraph of your despatch of 3rd June.

D. 8260/27.

No. 17.

The High Commissioner to the Secretary of State.

(Received 3.12 p.m., 17th August, 1927.)

Telegram.

[*Answered by No.* 18.]

17th August. Mining in Bechuanaland Protectorate. Chaplin has submitted details of system of special grants which I think will prove acceptable. Address to be presented to Mr. Amery reiterates the Advisory Council's demand for exploitation of mining concessions. Address from Isang, Acting Chief of Bakhatla, also contains request that mining enterprises should be undertaken by companies holding concessions.

I am of opinion that we should expedite promulgation of mining legislation and propose that the Secretary of State who is in Rhodesia should reply that negotiations are proceeding with the Company with a view to facilitating mineral development.—Athlone.

D. 8260/27.

No. 18.

The Secretary of State to the High Commissioner.

(Sent 6.40 p.m., 19th August, 1927.)

Telegram.

Your telegram 17th August.* Bechuanaland Protectorate mining. I think it would be better to inform Advisory Council that a good deal of progress has been made towards preparation of legislation required for regulation of mining operations in the Territory and that matter will be expedited so far as will permit. I prefer this to your proposed form of reply as negotiations will be needed with other concessionaires as well as British South Africa Company and also with natives concerned.

I gather that your conversations with Chaplin will enable you to proceed with drafting of proclamation and I shall be glad if you will forward draft for consideration at your early convenience. If technical assistance required for drafting you are authorised to incur necessary expenditure from Bechuanaland Protectorate funds for the purpose.—Secretary of State for Dominion Affairs.

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* No. 17.

D. 10008/27.

No. 19.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE

(Received 17th October, 1927.)

(Confidential (2).)

SIR, High Commissioner's Office, Cape Town, 27th September, 1927.

WITH reference to my despatch Confidential of the 13th June,* I have the honour to enclose, for your information, copy of correspondence with the Resident Commissioner, Mafeking, on the subject of prospecting in the Bamalete Reserve, Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 19.

(No. 466.)

MY LORD, Resident Commissioner's Office, Mafeking, 13th September, 1927.

WITH reference to Your Excellency's Confidential telegram of the 10th June regarding prospecting in the Bamalete Reserve, I have the honour to enclose for your information copies of two letters which have been received by the Magistrate at Gaberones from Messrs. Minchin and Kelly, Attorneys, Mafeking.

The Magistrate was duly instructed in terms of Your Excellency's telegram and he reported on the 11th June as follows:—

> "Sergeant Bartlett replies that Mr. Ranon and his associates are not at present at Ramoutsa, the last of them, a Mr. Brown, having left for Graefontein on Wednesday last, and that they expressed a doubt as to whether they would return to Ramoutsa. Certain machinery has, however, been left there."

On the 8th July a Mr. J. Godfrey Smith called at this Office, having the permission of the Balkis Company to prospect in the Bamalete Reserve. The Magistrate and the Chief were duly informed, and on the 13th July Mr. Smith wrote to the Magistrate to say that he was working in the vicinity of Mahosi Siding.

I propose, if Your Excellency concurs, to reply that the question of mining rights of the Balkis Company in the Bamalete Reserve is under consideration by the Secretary of State, and that until this is settled Chief Seboko has been informed that he should not interfere with persons prospecting under authority of the Balkis Company.

I have, &c.,
R. M. DANIEL,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

SIR, Mafeking, British Bechuanaland, 9th August, 1927.

WE have the honour on behalf of the Chief Seboko Mokgosi and the Bamalete people to formally place on record their repudiation of the right claimed by the Balkis Land Company, Limited, to prospect for precious stones and minerals on their Reserve under a concession granted many years ago by the Chief of the Bangwaketse and of which concession the Balkis Land Company, Limited, is the present holder. The Chief and his people emphatically deny that their people have at any time been subjects of the Bangwaketse people or that the Chief of the Bangwaketse people had any right or authority to grant rights in respect of the land of the Bamalete people.

The Chief informs us that he has notified the British South Africa Company, from which he receives an annual payment for prospecting rights over the Bamalete Reserve of the claim made by the Balkis Land Company, Limited, as it appears to him that the British South Africa Company is the Company principally interested in the matter.

* No. 16.

The Chief and his people appear to regard the matter more from a national than a financial point of view, as they look upon the concessions as an assumption of authority over their people, which they are unable to admit.

We have, &c.,
MINCHIN & KELLY.

The Resident Magistrate,
Gaberones,
Bechuanaland Protectorate.

DEAR SIR, Mafeking, British Bechuanaland, 5th September, 1927.

WE have been in communication with the General Manager of the British South Africa Company with regard to the position taken up by Chief Seboko towards the Balkis Company, and he has written that he agrees with the Chief that his Company has preferential rights of prospecting in the Bamalete Reserve and that the Balkis Company's rights are limited to the Bangwaketsi Reserve.

We write this letter as you will no doubt be interested to know the attitude that the British South Africa Company takes in the matter.

We are, &c.,
MINCHIN & KELLY.

The Resident Magistrate,
Gaberones, B.P.

Enclosure 2 in No. 19.

(Confidential.)

(No. 1491.)

SIR, High Commissioner's Office, Cape Town, 27th September, 1927.

I HAVE the honour to acknowledge the receipt of your despatch No. 466 of the 13th September enclosing copies of two letters which have been received by the Magistrate at Gaberones from Messrs. Minchin and Kelly, Attorneys, Mafeking, in which, on behalf of the Chief of the Bamalete, they repudiate the right of the Balkis Company to prospect for precious stones and minerals within the Bamalete Reserve.

2. I think that for the present it would be sufficient to acknowledge the receipt of the letters and to say that they have been communicated to me and that I have forwarded copies to the Secretary of State. I agree that Chief Seboko should be warned against interference with persons who may be prospecting under the authority of the Balkis Company.

3. I observe that it is stated in Messrs. Minchin and Kelly's letter of the 9th August that Chief Seboko has stated that he received from the British South Africa Company a subsidy for prospecting rights over the Bamalete Reserve. I presume that the Chief has in mind the annual subsidy of £50 referred to in the British South Africa Company's letter of the 13th February, 1923, of which a copy was enclosed with Sir James Macgregor's Confidential despatch of the 10th May, 1923.* It will be seen on reference to that letter that the annual payment in question is not made in respect of any mineral rights possessed by the British South Africa Company in the Bamalete Reserve.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

D. 10266/27.

No. 20.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Secret.)

MY LORD, Downing Street, 9th November, 1927.

WITH reference to Mr. Amery's Secret telegram of the 22nd April, 1926,† and subsequent correspondence on the subject of mineral concessions in the Bechuanaland Protectorate, I have the honour to inform you that a report has now been received

* Enclosure 1 in No. 14 in Dominions (South African) No. 2.

† No. 55 in Dominions (South African) No. 2.

from the Law Officers on the question of the terminability of the Khama Concession. The report has been somewhat delayed as it was found desirable to refer the matter in the first place to an authority on Roman-Dutch Law.

2. The Law Officers state that in their opinion it is clear that the Concession granted by the Paramount Chief on the 25th of July, 1893, has to be construed according to the Law of the Cape of Good Hope and it follows that the questions whether the Concession can be determined, and, if so, what notice is required to determine it, depend upon the Cape Law. Mr. Feetham has advised that under that Law the Concession is determinable by a year's notice, and his opinion has been confirmed by Mr. Leslie Blackwell. The Law Officers have had before them a carefully reasoned opinion by Professor Lee, in which he reaches the same conclusion. They feel bound to accept the statement of these lawyers as to the South African Law and to conclude on the basis of their opinion that the Paramount Chief of the Bamangwato, for the time being, is entitled to determine the Concession by giving a year's notice.

3. The Law Officers consider that there is jurisdiction in the Resident Commissioner to try an action brought by the British South Africa Company against the Paramount Chief to enforce the Company's rights under the Concession. They observe that the question whether it is desirable, in the interests of the Bechuanaland Protectorate generally, to determine the Concession is one of policy, upon which they express no opinion. If it should be considered desirable that the Concession should be terminated, the best course would be, in their opinion, to advise the Paramount Chief to give to the Company a year's notice in a form which should preferably be settled by a South African lawyer, determining the Concession. The Company could then bring an action before the Resident Commissioner disputing the validity of the notice and the case could be brought by way of an appeal before the Privy Council. The Law Officers add that if there is jurisdiction, such as exists in the High Court in this country, to try purely declaratory actions under South African Law and procedure, it would be possible to obtain a judicial decision by means of an action brought by the Company claiming a declaration that its Concession is perpetual and that this would be a convenient course to adopt.

4. You will understand that this opinion of the Law Officers should not be regarded as affecting the view expressed in the telegram under reference as to the desirability of securing a new concession for the Company.

I have, &c.
(for the Secretary of State),
LOVAT.

D. 12488/28.

No. 21.

MR. J. B. SIDEBOTHAM (DOMINIONS OFFICE)

to

MR. P. J. BAIRD (BRITISH SOUTH AFRICA COMPANY).

DEAR SIR, Downing Street, 29th November, 1928.

SIR EDWARD HARDING asks me to thank you for your letter of the 27th November,* forwarding a list of headings of the more important points regarding the draft Bechuanaland Protectorate Mining Proclamation which Sir Drummond Chaplin wishes to discuss to-morrow. Sir Edward thinks that Sir Drummond would like to know beforehand that there are in addition certain points of principle which he thinks might be further discussed, viz.:

(1) Whether the Company agree in principle that they should pay, for the benefit of the natives in the Bamangwato Reserve in addition to the £300 per annum at present paid to the Chief, some proportion of any mining royalties received by the Company. This, it will be remembered, was a point which was discussed by Sir Charles Davis with Mr. Malcolm during the conversations which took place early in 1926. It is appreciated, of course, that Clause 31 of the draft Proclamation has a bearing on this point.

(2) Would the Company be prepared to surrender their preferential rights in respect of minerals and lands and, if so, for what consideration. It will be remembered that, at an earlier stage, the question of the surrender of these rights was also discussed between Sir C. Davis and Mr. Malcolm. This is a point on which

* D. 12488/28: not printed.

the Secretary of State would naturally wish to consult the High Commissioner, but it is desired to ascertain the present views of the Company.

(3) May it be assumed that the Company are satisfied to collect their own royalties in their mineral concession areas?

(4) Have the Company any observations on the clauses of the draft Proclamation relating to diamonds?

(5) It is noticed that, amongst the headings, there is a suggestion that provision should be made for prospecting and mining on the Tuli, Lobatsi, and Gaberones blocks, and it would be convenient to know what provisions on this point the Company have in mind.

Yours faithfully,
J. B. SIDEBOTHAM,
Private Secretary.

D. 12489/28.

No. 22.

MR. J. B. SIDEBOTHAM (DOMINIONS OFFICE)

to

MR. P. J. BAIRD (BRITISH SOUTH AFRICA COMPANY)

[Answered by No. 23.]

DEAR SIR, Downing Street, 5th December, 1928.

WITH reference to your letter of the 29th November,* I enclose a copy of a note of the discussion which took place here last Friday, regarding the draft Bechuanaland Protectorate Mining Proclamation. Sir Edward Harding would be glad if you would ascertain whether the Directors present at the meeting concur in the note, or whether there are any amendments or additions which they may wish to suggest. It is proposed, when the note is agreed, to forward a copy to the High Commissioner for South Africa. Copies of the memorandum enclosed in your letter of the 29th November will be sent to the High Commissioner by this week's mail, and if it is possible for you to reply to this letter in time, a copy of the note of the discussion will be included in the same despatch.

Yours faithfully,
J. B. SIDEBOTHAM,
Private Secretary.

Enclosure in No. 22.

NOTE OF DISCUSSION AT THE DOMINIONS OFFICE ON THE 30TH NOVEMBER, 1928, REGARDING THE DRAFT BECHUANALAND PROTECTORATE MINING PROCLAMATION.

Present:

Sir E. J. Harding, K.C.M.G., C.B. (in the Chair).	
Sir H. Birchenough, Bt., K.C.M.G.	British South Africa Company.
Sir F. Drummond Chaplin, G.B.E., K.C.M.G.	
Mr. C. Hely-Hutchinson	
Sir H. F. Batterbee, K.C.V.O., C.M.G.	Dominions Office.
Mr. R. A. Wiseman	
Mr. H. N. Tait	

(1) It was agreed to take first the points referred to in the letter sent to Mr. Baird on the 29th November,† and as to the first of these Sir E. Harding pointed out that at the discussion between Sir C. Davis and Mr. Malcolm in 1926, it was understood that the Company would be prepared, in connection with the revision of the Khama Concession, to consider the question of arranging to pay for the benefit of the natives in the Bamangwato Reserve some percentage of the royalties they might receive. As matters stood at present, the natives would receive no share of the profits which would accrue to the Company if minerals were dis-

* D. 12488/28: not printed. † No. 21.

covered in payable quantities, and it would clearly be helpful if the Administration could, when approaching the Chief with a view to the grant of a new concession, explain that some portion of the Company's proceeds would be set aside explicitly for the benefit of the natives.

On this point it was represented by the Company that they had paid the Chief the sum of £300 per annum for over 30 years, in return for which the Company had so far received nothing, and that if mining operations were started the natives would benefit by obtaining remunerative employment. The Company were being required under the proposed Proclamation to pay a considerable rental to the Administration, and it was open to the Administration to set aside part of the revenue for the benefit of the natives.

The point was considered further in relation to Clause 31 of the draft Proclamation in regard to which the Company has asked that the proposed rental of 2s. per square mile should be reduced to 6d. per square mile, the former figure being in their opinion excessive.

Sir E. Harding observed that it seemed possible the figure provided for in Clause 31 might be too high, but suggested that the Company should consider as a basis of a compromise whether, if the rental were reduced to some agreed figure, the Company could not agree to pay in addition a percentage of their royalties, which would be set aside for the benefit of the natives. No definite conclusion was reached on the point but it was understood that the Company would give the matter further consideration.

(2) As regards the question of the Company's preferential rights Sir E. Harding observed that he raised the point because it had been referred to in the heads of agreement originally drawn up by Captain Clifford and in the subsequent discussion with Mr. Malcolm. The suggestion had then been that the Company should surrender their rights in this respect in return for some proportion of any mining royalties received by the Crown. He did not think, however, that the Government could agree to an arrangement of this kind being made for an indefinite period. The question was discussed whether it could be limited to a period of 25 years from the respective dates on which any parts of the Crown lands were thrown open to prospecting, but as it appeared that the Directors felt it difficult to accept this, and did not themselves attach special importance to making any arrangement for the commutation of their preferential rights, it seemed better to abandon the idea, and proceed on the basis of the draft Proclamation. The Company mentioned in this connection that, though the point did not appear to be specifically provided for in the Proclamation, they understood that Crown lands would not be thrown open to public prospecting without the Company being first given the option of taking a Crown grant in respect of the area concerned.

(3) As regards the collection of royalties it appeared that the Company were willing to collect these in cases where they made special grants, but they would like the Administration to arrange to collect royalties in any parts of their Concession areas thrown open to public prospecting. Provision as to this had been inserted in the revised draft of the relevant clauses submitted by the Company. It was not, however, in fact contemplated that there would be much occasion to open any portion of their Concessions to public prospecting.

(4) In connection with the clauses as to diamonds, the Company explained that they were bound to transfer to the De Beers Company any diamond rights they might have—this arrangement therefore covered their Concessions in the Bamangwato and Bakwena Reserves, so far as these related to diamonds, and any concession of diamond rights elsewhere in the Protectorate which they might obtain. It was agreed that the Company should show the draft Proclamation to the Directors of the De Beers Company, and ascertain if they had any observations to offer.

(5) The last point in the letter to Mr. Baird had been covered by the memorandum supplied by the Company. As regards the Company's memorandum, Sir E. Harding observed that most of the points were drafting or technical points and that as the draft Proclamation had been prepared in South Africa they could not be settled here, but that the memorandum would be referred to the High Commissioner for consideration.

In connection with paragraph 10 of the memorandum, as to Royalties, the Directors explained that it would be an advantage if the Crown and the Company charged the same scale of royalties; and as regards paragraph 11 they drew attention to the fact that the extra-lateral rights of mining which existed in Southern Rhodesia had given rise to considerable difficulty and litigation.

As regards paragraph 12, Sir E. Harding referred to the suggestion that provision should be made for the possibility of further mineral concessions being granted, and

observed that in the heads of agreement proposed by Captain Clifford the matter had been dealt with on the basis that the Crown would agree, after the expiration of a period of (say) ten years, or as soon as it might be possible to estimate the effect of the proposed arrangements upon the interests of the natives, to consider the advisability of granting new limited concessions in native reserves or of resuscitating for a short period, Concessions (such as the Moremi or Lenchwe Concessions) which had expired or been cancelled. He did not think it would be possible to go beyond this at present. As regards existing concessions he stated that he appreciated the Company's point that these should not be thrown open to objection except in so far as they had to be modified to conform to the proposed settlement.

Amongst the minor inaccuracies in the draft Proclamation the Company pointed out that some words had been left out in Clause 44 (*a*).

Dominions Office,
December, 1928.

D. 12811/28.

No. 23.

MR. P. J. BAIRD (BRITISH SOUTH AFRICA COMPANY)

to

MR. J. B. SIDEBOTHAM (DOMINIONS OFFICE).

Rhodesia House, 2, London Wall Buildings,
London, E.C.2, 6th December, 1928.

DEAR SIR,

BECHUANALAND PROTECTORATE. MINING PROCLAMATION.

I AM instructed to acknowledge your letter of 5th December,* enclosing a note of the discussion on this subject on Friday, 30th November, and to say that subject to the following reservations the Directors concur in the note.

(1) The Directors think that it will be helpful if at this stage they define the Company's attitude with regard to the suggestion that a proportion of the royalties in Mineral Concession areas should be paid over for the benefit of the natives.

In the course of the 1926 discussions, Mr. Malcolm said no more than that the suggestion, which emanated from Sir Charles Davis, would be considered by the Company, and it would be unduly stretching Mr. Malcolm's meaning to infer that the 1926 discussions committed the Company to agree to it. This was indeed made clear in Mr. Malcolm's letter to Sir Charles Davis of 9th April, 1926.†

If that is clear the suggestion itself cannot be dealt with.

Without repeating the arguments which are set out in the Company's memorandum of January, 1925,‡ and entitle the Company, in the Directors' opinion, to the greatest possible measure of friendly sympathy and help from the Crown in this matter, it is sufficient for this purpose to remember that the Company's expenditure in the Protectorate refers not only to the cost of acquiring and maintaining the rights which it holds but also to compensatory payments made, at the Company's expense, by arrangement with the Government, to the grantees and the Native Chief grantors of certain concessions which, in 1893, were thought to be undesirable and were therefore not approved. Native Chiefs alone have already received upwards of £35,000 in concession rentals and compensation, and annual payments under both headings continue to be made—the Company's total expenditure being of course considerably larger than that sum.

The Company has already agreed without demur to the limitation of its exclusive prospecting rights to 25 years, and this is a material limitation. The Directors appreciate that the administration of the Mining Proclamation will involve the Crown in certain expenses of administration. During the period of initial prospecting these expenses are not likely to be large and if little or nothing is found are not likely to increase. If however any minerals are found their subsequent development can be counted on to bring to the Crown, and the territory generally, revenues and other benefits which will amply compensate for the consequent increase in administrative expenditure.

The Directors do not however object to the proposed provision, in Section 31 of the draft, for an annual rental payable to the Crown by Concession Holders, except

* No. 22. † D. 3901/26: not printed. ‡ No. 43 in Dominions (South African) No. 2.

as to the proposed amount. But they do not feel that there is any justification for asking them to reduce the value of their rights still further by undertaking to pay any portion of their royalties to the Native Chiefs in addition to the rentals for which the Concessions provide.

The natives in the territory will benefit substantially as the result of any mining that takes place there, both in opportunities for employment, and if they choose, in markets for their products, and the Directors understand that because they realise this some of them actually pressed the Secretary of State, during his recent visit, to do his best to expedite the exploitation of the minerals in their territories.

(2) While the Directors can take no exception to the terms of the note relating to the Company's preferential rights they feel that it would be advisable that this matter should be settled by commutation on the lines of the original discussions.

(3) The Directors repeat that while the British South Africa Company do not desire to press for any earlier consideration of the matter of the Moremi (Batawana) Concession than is proposed, the Linchwe (Bakhatla) Concession is on a different basis because that is the only asset of the Linchwe Company. They feel that if, under the proposed arrangements, the Linchwe Company is going to be allowed to prospect in the 100 square mile area which it has already selected, no one will be harmed if, from the inception of these arrangements, it is allowed to prospect in the 100 square mile area which it desires to select in its place, and to the selection of which the Chief has already agreed.

(4) The Directors are glad to note that Sir Edward Harding appreciates their point that existing approved Concessions should not be thrown open to objection in the manner proposed in the draft Proclamation except in so far as they have to be modified to conform to the proposed settlement. They suggest that if the proper modifications are set out in the Proclamation in the manner proposed in the revised draft they have submitted, it should not be necessary to negotiate revised Concessions with the Native Chiefs.

Yours faithfully,
PERCY J. BAIRD,
Secretary.

D. 12489/28.

No. 24.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Bechuanaland Protectorate.)
(Confidential.)

SIR, Downing Street, 6th December, 1928.

WITH reference to your Confidential despatch of the 3rd October* and connected correspondence, I have the honour to transmit copies of a memorandum,† received from the British South Africa Company, regarding the draft Bechuanaland Protectorate Mining Proclamation.

2. A further despatch on this subject will be sent to you as soon as possible.

I have, &c.,
L. S. AMERY.

D. 12811/28.

No. 25.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Bechuanaland Protectorate.)
(Confidential.)

SIR, Downing Street, 13th December, 1928.

WITH reference to my Confidential despatch of the 6th December,‡ I have the honour to state that the draft Bechuanaland Protectorate Mining Proclamation was

* D. 10912/28: not printed. † D. 12488/28: not printed. ‡ No. 24.

discussed with the Directors of the British South Africa Company at a meeting here on the 30th November.

2. I enclose for your information copies of—
(a) a letter* sent to the Company prior to the discussion;
(b) a note† of the discussion prepared in this Office;
(c) a letter‡ from the Company explaining, in further detail, the views of the Directors on certain of the points raised at the discussion.

3. I hope to be in a position to communicate my observations on the subject at an early date.

I have, &c.,
L. S. AMERY.

D. 12811/28.

No. 26.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Bechuanaland Protectorate.)
(Confidential.)
(No. 41.)

MY LORD, Downing Street, 23rd January, 1929.

I HAVE the honour to refer to my Confidential despatches of the 6th§ and 13th December,‖ regarding the draft Bechuanaland Protectorate Mining Proclamation.

2. As I understand that Sir Drummond Chaplin has now returned to South Africa, it would be convenient if the various points in connection with the draft Proclamation which have been raised in the documents enclosed in my despatches under reference could, so far as necessary, be discussed further with him after you have been able to consult your legal adviser. I should however like to make the following comments on the letter from the British South Africa Company of the 6th December.‡

(i) The suggestion which was raised in the discussions with Mr. Malcolm in 1926 that the Company should arrange to pay, for the benefit of the natives of the Bamangwato Reserve, some proportion of any royalties they might receive, was put forward not only because it was thought that such an arrangement would facilitate the granting of a new Concession by the Chief, but also because it appeared undesirable, in principle, that the Administration should advise a Native Chief to grant a mineral concession, which in the event of an important discovery of minerals might prove of considerable value, in return simply for a fixed annual rent.

While I have not overlooked the observations on this point in paragraph 26 of your Confidential despatch of the 27th May, 1926,¶ I feel that this second consideration is of importance, and whatever settlement may be arrived at in connection with the revision of the Khama Concession, the point is one which will have to be kept in mind in connection with the grant of any new Concessions in the Protectorate which may be considered.

So far as the Khama Concession is concerned I recognise that the question must be considered in conjunction with the proposal to charge the holder of a mineral concession with an annual rental over and above any rent provided for in the Concession. As to the latter point, I am not aware of the considerations which led you to propose a figure of 2s. a square mile, and I should have no objection to the figure being reduced if you consider that the representations made by the Company are well founded. But in so far as the Company base their arguments on the sums which they have expended in the past on payments to the Native Chiefs, it may be pointed out that there must be set against this outlay the fact that the Company have received recognition of a preferential right to Concessions in the Protectorate and that it was also mainly on account of such expenditure that they were given the considerable areas in the Protectorate comprising the Tuli, Lobatsi, and Gaberones Blocks.

As regards the reference in Mr. Baird's letter to Mr. Malcolm's letter of the 9th April, 1926,** the substance of which was embodied in my telegram of the

* D. 12488/28: not printed. † Enclosure in No. 22. ‡ No. 23. § No. 24.
‖ No. 25. ¶ No. 58 in Dominions (South African) No. 2. ** D. 2901/26: not printed.

22nd April, 1926, Confidential, No. 2,* I may call attention to the subsequent communication received from Mr. Malcolm of which I informed you in my Confidential telegram of the 29th April, 1926.†

(ii) As regards the question of the Company's preferential rights you will see from the note of the discussion with the Directors, that it was thought desirable to ascertain whether the Company might be prepared to consider an arrangement for the commutation of these rights in exchange for some proportion of any mining royalties received by the Crown over a limited period of time. As however it does not appear from the discussion or from the Company's letter of the 6th December,‡ that the Company would be prepared to consider a limited arrangement of this kind, the best course seems to be that it should be left for the representatives of the Company, if they so desire, to put forward further proposals. I gather that the point is not one to which you attach special importance.

(iii) It will be seen that the Company suggest that steps should be taken forthwith to approve the new (unconfirmed) Concession obtained by the Linchwe Company, but, subject to any views you may have on the point, I feel that the matter must be left for future consideration in the light of the working of the new Proclamation when issued.

(iv) As regards the last paragraph of the Company's letter of the 6th December,‡ I assume that you will agree that it will in any case be necessary to arrange for the revision of the Khama Concession on the lines proposed in your Confidential despatch of the 27th May, 1926.§ In the case of the Concessions held by the British South Africa Company in the Bakwena Reserve, and by the Balkis Company in the Bangwaketse Reserve, it will be necessary to consider these on their merits. The former Concession, as modified by Lord Ripon's despatch of the 15th January, 1895,‖ gives the Company general prospecting rights for a period of five years from a date to be fixed, with the right to mark off during the period an area for mining operations not exceeding 10 miles square, and it was stated in Lord Ripon's despatch that the Concessionaires should arrange with the Chief the terms of the Concession so far as they might affect the natives, subject to the approval of the Government. I am not sure whether there is in existence any formal document signed by the Chief embodying the terms of the modified Concession; if not, it would seem necessary to arrange for such a document to be issued before any prospecting under the Concession is commenced, and it will, of course, also be necessary to settle the date when the five years' period is to start. As regards the Balkis Company's Concession, I note from your telegram No. 74 of the 30th October,¶ that you propose to consider the possibility of arranging with Sir E. Oppenheimer that he should buy out this Company's rights; failing this it would at least be desirable to come to terms with the Company as to the revision of the Concession, and one point which it would be necessary to deal with in this connection is the position in the Bamalete Reserve. As you are aware from my Confidential telegram of the 10th June, 1927,** it has not been found possible to dispute the view that the Company's rights extend to the Bamalete Reserve, and in the circumstances it would appear desirable that it should if possible be arranged in any revision of the Concession that it should not be regarded as extending to this Reserve.

3. You will no doubt consider in consultation with your legal and expert advisers the various amendments in the draft Proclamation proposed in the memorandum submitted by the Company, which I think you will agree contains some useful suggestions.

4. With regard to the question of the inclusion of oil and oil shales in the definition of minerals, I may refer to the correspondence enclosed in your despatches Nos. 468 of the 27th September,†† and 499 of the 7th October, 1927,‡‡ and also your despatch No. 399 of the 2nd August, 1927,§§ and connected correspondence.

5. I am disposed to agree with the Company that there should be a separate section relating to Private Lands; in this connection the position of the Tati Company also has to be considered. It would I think be desirable, with a view to avoiding possible misunderstanding, that the draft Proclamation should be communicated to the Tati Company before it is issued, with some explanation as to what is proposed with regard to the application of the Proclamation to the Tati District, and I should be glad to learn your views on this point in due course.

6. I understand that the British South Africa Company have submitted the draft Proclamation to the De Beers Company for their comments as regards the

* No. 54 in Dominions (South African) No. 2. † No. 57 in Dominions (South African) No. 2.
‡ No. 23. § No. 58 in Dominions (South African) No. 2. ‖ No. 36 in African No. 537.
¶ D. 11265/28: not printed. ** No. 14. †† D. 9998/27: not printed.
‡‡ D. 10241/27: not printed. §§ D. 936/27: not printed.

clauses relating to diamonds, and I will communicate their observations when received. I do not at present entirely understand the intention of Clause 36 of the draft Proclamation, which provides that no person shall prospect for or win diamonds (i) on *any* land unless the High Commissioner has by notice in the Gazette declared such land to be open for prospecting or mining, (ii) on *any Crown land or Native Reserve* unless he is the holder of a Crown grant. I gather from your telegram No. 60 of the 31st August* that the first restriction would not be enforced in the case of rights already acquired under a mineral concession, and it could not, similarly, be applied except by consent in the Tati district or other private lands; as to the second provision it is not clear how a Crown grant can be made in respect of the Native Reserves, where the Crown has no mineral rights.

7. Since much of the draft Proclamation is taken from the Northern Rhodesia Mining Law No. 5 of 1912, I may perhaps mention that there are various amendments of that Law contained in the Northern Rhodesia Proclamations and Ordinances Nos. 24 of 1915, 14 of 1924, 4 and 6 of 1927, and 3 of 1928. You will no doubt consider, if you have not already done so, whether any of the provisions in these amending laws need be applied in the case of the Bechuanaland Protectorate.

I have, &c.,
L. S. AMERY.

D. 998/29

No. 27.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 3.20 p.m., 26th January, 1929.)

TELEGRAM.

No. 6. My despatch 13th December, Confidential.† Despatch‡ communicating my observations regarding Bechuanaland Protectorate Mining Proclamation is being sent by mail of 25th January. Now informed that Director of De Beers Company in London, who were consulted by British South Africa Company as to diamond provisions, found it necessary to refer to Kimberley and there will be no objection therefore to your showing draft to Oppenheimer.—AMERY.

D. 2108/29.

No. 28.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 18th February, 1929.)

[*Answered by No. 31.*]

(Bechuanaland Protectorate.)
(No. 82.)
(Confidential.)

SIR, High Commissioner's Office, Cape Town, 1st February, 1929.

I HAVE the honour to enclose herewith another draft§ of the Bechuanaland Protectorate Mining Proclamation to which further amendments and alterations have been made by the Imperial Secretary after consultation with the Legal Adviser and Sir Robert Kotze.

2. The amendments and additions shown in red ink manuscript were made by the Imperial Secretary with the object of meeting, as far as possible, the criticisms contained in the British South Africa Company's memorandum forwarded with your despatch Confidential of the 6th December.‖

3. The addition to the definition of the term "Crown Land" has been made for the purpose of excluding the European Blocks including the Tati District from the scope of the provisions relating to Crown Lands.

4. The British South Africa Company's suggestion that the term "Prospecting Licence" should be replaced by the term "Prospecting Permit" seems a good one and has been accepted.

5. The term "Special Grant" has been deleted from the definitions and from Section 33.

6. As the minerals in private lands are all owned by big companies who in

* D. 9065/28: not printed. † No. 25. ‡ No. 26. § Not printed. ‖ No. 24.

most cases will wish to exploit them as portions of larger concessions, I see no reason for making special provisions regulating mining in such areas.

7. On the assumption that you are definitely opposed to the Bamalete Chief's contention that the Chief of the Bangwaketsi had no power to grant the Balkis Company a mineral concession embracing his Reserve which he contends was independent conquered country at the time when the concession was granted, I am prepared to accept the Company's contention that as all existing concessions have been already approved by the Secretary of State there is nothing to be gained by inviting outsiders to dispute them, and I propose to amend Section 4 so as to provide for the registration of concessions subject only to a condition that applicants must satisfy the High Commissioner that their claims are in order and admissible. I presume, however, that it will be necessary to make provision for appeals to the special Court in the event of applicants for the registration of concessions being aggrieved by the decision of the Government in regard to their claims.

8. You will observe that Section 6 (3) has been amended so as to protect the owners of mineral rights in the European blocks and also the native Chiefs since I presume that you do not wish me to take power to throw open native Reserves to public prospecting without the consent of the Chief concerned.

9. Section 7 (2) has been amended to meet the Company's view that the power of the Mining Commissioner to refuse a prospecting permit should be circumscribed. I have accordingly made the Mining Commissioner's decision subject to the approval of the Resident Commissioner, but I do not think the High Commissioner's general power to issue an order for the expulsion of undesirables, which is very sparingly used, should have to be invoked in order to ensure that prospecting permits are held only by reputable persons.

10. I am disposed to take a sympathetic view of the Company's contention that the ownership of claims is such a fundamental mining right that it should not be lightly disturbed or repudiated by the Government. I have accordingly amended the appropriate section (No. 25 in the enclosed draft, formerly No. 11) so as to retain the Mining Commissioner's power to remove " squatters " as expeditiously as possible without rendering it necessary to interfere with legally acquired mining rights.

11. I have deleted Sub-Section (7) of Section 19 which prescribes that there shall be no appeal from a decision which has been submitted to a Mining Commissioner. It is very desirable that mining disputes should as far as possible be settled by arbitration rather than by litigation, but I am afraid that if the Mining Commissioner's decisions are to be made finally binding, very few people will invoke his assistance to settle their disputes and many minor differences, which might have been solved satisfactorily by an arbitrator, will find their way to the Courts. In view of the terms of Section 85 (3) I considered cancellation of Sub-Section (7) of Section 19 was all that was required in order to meet the difficulties referred to above.

12. I am satisfied that the Crown would be well advised to refuse to collect royalties for companies and individuals, and I am informed that a commission of 5 per cent. would not cover the cost of collection. I have accordingly added a new Sub-Section (2) to Section 28 making legislative provision for the payment of royalties to companies and individuals, but at the same time absolving the Crown from the onus of collecting them.

13. Section 29 (1) has been amended to meet the objection to which attention was drawn by the Company due to the fact that some concessions are for periods of less than 25 years. As the Proclamation may not be enforced simultaneously all over the Protectorate, the date from which the duration of concessionary rights is calculated has been laid down as the date on which the Proclamation is applied, by notice in the Gazette to the area concerned.

14. Section 31 has been amended so as to deduct from rentals payments due to native Chiefs in respect of concessions. I regard this as a reasonable concession if the 2s. rate is to be maintained, but not otherwise. A further proviso has been added to enable the High Commissioner to remit rentals in recognition of equivalent services rendered towards the development of Crown Lands under the jurisdiction of the High Commissioner.

15. Section 33 has been amended to meet the Company's objection to the use of the term " special grant," but the High Commissioner's approval has still to be obtained before any cession or transfer of mineral rights in a concession can be effected.

16. Section 34 has been deleted and a new section substituted.

17. Sir Drummond Chaplin, to whom the foregoing amendments were submitted, asked for a section enabling the holder of a mineral concession to prospect on abandoned land on payment of arrears of rent. He pointed out that the British South

Africa Company usually ceded its mineral rights in concession areas to a selected syndicate for a period of three or four years, after which the rights would revert to the British South Africa Company, and might, at the expiration of that term, be leased again to another syndicate, which might wish to re-open prospecting over large areas considered valueless and " abandoned " by the first syndicate. It would, of course, be open to the British South Africa Company to maintain the rentals, but although they might not think it worth while going to that expense it would not follow that some other company could not be found which would be prepared to pay arrears in order to obtain the right to reprospect abandoned land. Moreover, if the Company is prepared to reduce its tenure of the concession to a period of 25 years, I think they should be given a fair run for their money during that period. Further, the Chief having signed, if he does, a concession ceding his mineral rights for 25 years, there is no reason why he should expect them to be handed back to him sooner, but you will observe that the High Commissioner has reserved the right to make a Crown Grant of abandoned portions of a concession in a native Reserve, and Section 35 (1) has been amended so that Crown Grants are no longer confined to Crown Lands, but may be made in respect of native reserves " subject to prior rights existing," which in this instance is the Chief's right to unceded minerals in his Reserve, and in the case of Crown Lands is the British South Africa Company's preferential rights. One of the effects of Section 35 as amended is to make the High Commissioner and not the Chief the negotiating authority when making Crown Grants in native Reserves, though, of course, the Chief would doubtless refuse to surrender his " prior rights " unless he were offered suitable recompense for doing so. Another effect of this Section is to make it possible to omit from the Proclamation any provision for the granting by Chiefs, with the approval of the High Commissioner, of new concessions or for resuscitating lapsed concessions. If it were thought desirable, for example, to grant a mineral concession in the Batawana Reserve, such a concession could, with the consent of the Chief, be negotiated by the High Commissioner under Section 35 on such terms as might be considered equitable, and the question of reviving the Moremi Concession would not arise.

18. The amendments and additions to this draft Proclamation, with the exception of 31 (*b*) have not been submitted to the Legal Adviser, and do not profess to do more than convey my intentions. The additional Sub-Section to Section 28 will, no doubt, have to be extended so as to make its provisions capable of application to the European Blocks.

19. Another Sub-Section has been added to Section 44 to enable the holder of a registered mining site to peg claims within that site. I am advised that such a provision is very desirable.

20. All the above amendments have been laid before Sir Drummond Chaplin, who has expressed satisfaction with them, though he still considers that the 2s. rental should be reduced. He has no further additions to suggest.

21. Necessary amendments have been made to the scale of royalties, and the British South Africa Company propose to submit for my consideration a definition of the term " gross value " calculated to prevent persons so disposed from evading the payment of the full amount of royalty due.

22. I should be obliged if I might, if possible, be acquainted with your views on the proposals put forward in this despatch by telegraph.

I have, &c.,
ATHLONE,
High Commissioner.

D. 3070/29.

No. 29.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE

(Received 11th March, 1929.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 136.)

SIR, High Commissioner's Office, Cape Town, 22nd February, 1929.

WITH reference to my despatch No. 215 of the 21st April, 1927,* I have the honour to enclose, for your information, a copy of correspondence with the Resident

* No. 12.

Commissioner, Mafeking, on the subject of the mineral concessions held by the Balkis Company in the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 29.

(Confidential.)
(110.)

My Lord, Resident Commissioner's Office, Mafeking, 9th February, 1929.

With reference to Your Excellency's despatch No. 649 of the 21st April in regard to the mineral concessions held by the Balkis Company, I have the honour to enclose for Your Excellency's information a copy of a minute from the Magistrate at Kanye.

There is no copy of an agreement between the Balkis Company and the Chief of the Bangwaketse made in 1897 or 1907 in this Office, but the annexures to Colonel Ellenberger's Confidential despatch of the 29th March, 1924, disclose the fact that some agreement was made in or about the year 1907 to raise the payment made to the Chief to £120 per annum. This points to the fact that some subsidiary contract may have been entered into at that date. If that is the case and should the terms of this subsidiary agreement contain clauses under which the concessionaires acquire trading rights, as suggested by the Magistrate, according to Section 45 of Proclamation of the 10th June, 1891, such an agreement would not be recognised by any Court of Law unless and until sanctioned by the Secretary of State.

As far as I have been able to ascertain the asbestos claim near Kanye has still to be proved and further shafts are being sunk, but I have not heard that operations there have proceeded beyond the prospecting stage.

With regard to the flotation of the Company "Kanye Asbestos Limited," an announcement of which appeared in the *South African Mining and Engineering Journal* on the 15th December, a copy of which I understand was left in Your Excellency's Office lately by the Government Secretary, I presume it is unnecessary for this Administration to take any action until it is approached in the matter.

I have, &c.,
R. M. Daniel.
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

The Government Secretary,
Mafeking.

Balkis Concession.

With reference to your minute No. J. 463 of 27th April, 1927, I have to report that recently Mr. Rowland granted an option to a Mr. Menel of Johannesburg to work Mr. Rowland's asbestos claim. Mr. Menel in turn sold part of his interests to a Mr. Solomon of Johannesburg, who has floated a working company with capital of £25,000 to continue development of the asbestos properties 10 miles west of Kanye. This may lead to the employment of many Europeans and natives. There are at present 5 Europeans and 100 natives employed. From what I can gather I understand the Balkis Company has an agreement made in 1897 or 1907 with the Chief of the Bangwaketse, but there is no copy filed in this office, neither has the Chief a copy, and you do not seem to be aware of it either. Under that agreement the concession is more favourable to the Balkis Company and there is the possibility of trading stores, &c., being opened if the mines are found to be payable. I understood from Mr. Dutton, an engineer, who recently visited Kanye, that a company cannot be floated without the knowledge or consent of both parties to the original concession. In reading the correspondence I notice a minute dated 18th March, 1924, from Mr. Blair, the Secretary of the Balkis Company, to the effect that he would notify His Honour

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of the names of persons to whom he issued licences and also that he would direct prospectors to pay their respects to the Chief. This has not been done lately. Recently five licences were issued, I have had no official knowledge. Several people have been here looking around and when questioned they have stated they were here on behalf of the Balkis Company, but not one has been able to produce any document or credential, and I would suggest that Mr. Blair inform all individuals coming here on behalf of the company and prospectors to produce some credential to the Resident Magistrate.

Recently two men arrived and stated they had been sent by the Balkis Company, but when asked could not produce references. Later I discovered they had come from Namaqualand to plant diamonds.

A. L. Cuzen,
Resident Magistrate.

Kanye,
22nd January, 1929.

Enclosure 2 in No. 29.

(Bechuanaland Protectorate.)
(Confidential.)
(No. 337.)

Sir, High Commissioner's Office, Cape Town, 22nd February, 1929.

I have the honour to acknowledge the receipt of your Confidential despatch No. 110 of the 9th February, forwarding a copy of a Minute from the Magistrate at Kanye with reference to the mineral concessions held by the Balkis Company.

2. I note that no information is available which would indicate that operations have proceeded beyond the stage of prospecting, and unless active mining operations are being undertaken or there is reason to believe that such operations are contemplated in the near future it would not appear that any immediate action on the part of the Administration is required. The Magistrate might, however, be told to report without delay in the event of active mining work, other than prospecting, being carried on in order that the position of the Company under the provisions of its concessions may be further considered.

I have, &c.,
Athlone,
High Commissioner.

His Honour,
The Resident Commissioner
of the Bechuanaland Protectorate.

D. 3068/29.

No. 30.

The High Commissioner to the Secretary of State.

(Received 11th March, 1929.)

(Bechuanaland Protectorate.)
(No. 138.)

High Commissioner's Office,
Cape Town, 22nd February, 1929.

Sir,

I have already reported in my account of an interview between the Chief Regent of the Bamangwato that I had come to the conclusion that Tshekedi and his people are definitely opposed to all progress in their Reserves.

Shortly after his return to the Protectorate, I was informed by the Resident Commissioner that Tshekedi was on his way to Cape Town to take legal advice in regard to his obligations under the Concession granted by Khama to the British South Africa Company. The Imperial Secretary saw the Chief on his arrival, and explained that while I had no objection to his consulting an Advocate, I was most anxious that he should not select undesirable lawyers to advise, and I particularly warned him against people like Advocate Lang, who had defrauded and misled the Ratshosas. I am pleased to be able to inform you that the Chief has selected Mr. Advocate D.

Buchanan, K.C., whose reputation is above reproach, and who is, I understand, closely connected with the early missionary families.

Mr. Buchanan subsequently called to see the Imperial Secretary, and I enclose herewith a very able opinion relating to the Chief's power to terminate the Concession by notice.

You will recollect that a copy of Mr. Feetham's opinion on this point was transmitted to the Chief by Sir James Macgregor, and I understand from Advocate Buchanan that he has been supplied with all records in the possession of the Chief, and the tribe. Mr. Buchanan was advised by the Imperial Secretary that questions of equity were involved, and you will observe that this aspect of the issue has been considered.

If as seems probable, the Chief intends to do his utmost to prevent mining in his Reserve it will be necessary to consider the attitude which the Administration should adopt. At one time I was of the opinion that it was very desirable to terminate these Concessions, though subsequently I thought the Chiefs would never be able, in the face of European pressure and progress, to lock up the minerals in perpetuity, and that it would be better to have them exploited by reputable companies in order to confine mining activities as soon as possible to definite mineralised areas, and thereby relieve the tribes and the Government of outside pressure, and demands for mineral rights and mining legislation.

I regret that I am unable to write at length on this important matter, as Mr. Buchanan's opinion was only handed to me an hour before the mail closed, and I am anxious that you should receive it as soon as possible.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure in No. 30.

PRELIMINARY.

DRAFT OPINION.

In this matter I am asked to give a legal opinion as to the validity and terminability of Chief Khama's Concession to the British South Africa Company dated 25th July, 1893, and as to whether the prospecting and mineral rights in the Chief's territory are vested in the Crown, the Chief or the British South Africa Company.

In order to give an opinion of any value, it is essential that I should have before me all records (*e.g.*, concessions, approvals, treaties, constitutions, proclamations and laws), relative to the points raised.

Consequently I have thought it advisable to state the facts as I understand them with a view to their submission to the Imperial Secretary with a request that he would use his good offices to correct same, and inform us of any error or omission therein.

Statement of Relevant and Essential Facts, Documents, &c.

1885. Chief Khama taken under the Protection of Great Britain but *no* formal written treaty.
? (Report to Colonial Office by Warren or McKenzie.)

1891. Order in Council, 9th May.

1891. Proclamation, 10th June.
19. Provided for law applicable to case in which Europeans or non-Natives were parties.
45. Provided that no Concession by any Native Chief should be recognised by any Court of Law until approved by His Majesty's Secretary of State.

1909. S.R. Proclamation 36 repeats above 19 and declares Laws of Cape of Good Hope on 10th June, 1891, shall, *mutatis mutandis*, apply in the said Protectorate.

1893. July 25th. Concession question.

1893. November 23rd. Concession approved by His Majesty's Secretary of State.
N.B.—It would appear consequently that the Concession was duly approved, and that the effect and scope thereof must be ascertained in accordance with the Laws of the Cape of Good Hope on 10th June, 1891.

1895. The Colonial Office contemplated placing Khama under the administration of the British South Africa Company, Khama went to England and protested, and asked the Queen to continue her protection.

November 7th. Colonial Office to Rev. Willoughby:—
"Each of the Chief Khama . . . . . shall have a country within which they shall live, as hitherto, under the protection of the Queen . . . . The Chiefs will rule their own people much as at present . . . ."

November 14th. Mr. Chamberlain to Sir Hercules Robinson:—
"As regards territories reserved to Chiefs, your predecessor's Proclamation of 10th June, 1891, remain in force. I do not wish to encourage pure white settlement there at present. The Chiefs held their lands subject to any grants or concessions from them, which have been approved."

November 18th. Colonial Office to Khama.
". . . . the people who held approved concessions must of course be allowed to use them, but Mr. Chamberlain is anxious that your country should be kept as much as possible for your own people . . . ."

1923. March 16th. R. Feetham (then the High Commissioner's legal adviser, now Mr. Justice Feetham), gave an opinion that the Concession could be terminated by giving notice.

March 28th. Sir James McGregor, Resident Commissioner, advises Chief Sekguna (?Sekgoma) to submit definite proposals to the Company by means of a letter which could be transmitted to the High Commissioner. Sir James advised offering an option to the Company in the event of the Chief and tribe being prepared to grant a subsequent concession.
May 26th. The High Commissioner asked the Secretary of State to take the matter up with the British South Africa Company.

Here the records end. I have no further correspondence, &c., before me.

According to Feetham's opinion the Chief can terminate the Concession on giving a year's notice thereof without refunding any rent or giving any option, *but* I understand the Chief is prepared to refund the whole of the rent paid (some £10,000), and grant an option to the British South Africa Company in the event of the Chief and tribe deciding to renew mining operations, and the Bamangwato people being unwilling or unable to exploit their own minerals, provided the Company agrees to the immediate cancellation of the Concession.

I have not yet had time to go into the authority fully, but Mr. Justice Centlivres had occasion to go into the question of the legal effect of a mining lease in the recent case of *Edwards, G. M., Co.*, v. *Mamogodi, No.* 1927, *T.P.D.* 288, where all the cases up to that date are collected and renewed, and on page 305 His Lordship summarises the position, and indicates that all such mining leases fall in one or two categories, either sales or leases. Applying His Lordship's test to the Concession under consideration it falls under the "lease" class. This to a certain extent confirms Mr. Feetham's opinion, for where no specific term is fixed in a lease same can be terminated on reasonable notice, and on this point I am inclined to agree that even though payments have to be made *monthly*, still it would be safer to give a *year's* notice.

Re in whom are the prospecting and mineral rights vested?

It seems clear that both after the Protection extended in 1885, and the Proclamation 10th June, 1891, the British Crown laid no claim to their rights, but acknowledged that they remained in the Chief and his people or the Crown not only recognised the Chief's right to grant a Concession thereof, but even approved of such exercise of his right by the Chief. Moreover, in 1895 the Colonial Secretary confirmed the said Proclamation 10th June, 1891. Consequently it seems to me that the Crown cannot now, either by direct Proclamation or by indirect regulation, deprive the Chief of his rights to grant or withhold prospecting and mining rights, without committing a breach of the Constitution under which security was offered and accepted. I gather that as it is clear that the Chief's territory will never be extended or new land given for any land that might be required for mining, and as it is of vital importance to the tribe that their existing rights to water, grazing, and timber should not be diminished, it is the desire and aim of the Chief and tribe to prevent prospecting and mining altogether in the territory.

Consequently, if the Concession can be determined, there is no need for any mining or prospecting regulations, and the Chief feels that every effort should be made to bring the Concession to an end.

If this can be effected in the manner suggested by Mr. Feetham, well and good.

If not, can the Imperial Secretary suggest any alternative method?

Is it the intention of the Imperial Government to encourage and facilitate immediate mining operations as the Chief and tribe are very disturbed at such a course—can the Imperial Secretary see his way to postpone such legislation until the Chief and people have fully considered the proposed regulations and submitted their representations thereon?

D. 2108/29.

No. 31.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 12.45 p.m., 14th March, 1929.)

TELEGRAM.

[*Answered by No. 34.*]

No. 21. Your despatch 1st February, No. 82* Bechuanaland Protectorate Mining Proclamation. I presume you are now consulting your legal adviser in the light of observations in my despatch of 23rd January, No. 41,† and I propose therefore to reserve detailed consideration of suggested amendments or further reference to the British South Africa Company until I receive your final recommendations after such consultation. I may state, however, as regards new proviso (*b*) to Clause 31, that it is not clear to me how it is to be decided (1) whether the operations of the holder of a mineral concession in a native Reserve have improved the development of Crown Lands and if so to what extent, or (2) what proportion of the rent may be waived according to the degree of such improvement. I shall be glad to have further information as to the intention of this provision, but my present feeling is that it gives too wide a discretion as to the amount of rental to be charged in individual cases and that it is undesirable in principle that provision relating to taxation should be left on this indefinite basis.

I have not yet received observations of De Beers on the clauses relating to diamonds, but possibly you will hear from the local Directors on this point.—AMERY.

D. 3387/29.

No. 32.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 18th March, 1929.)

(Bechuanaland Protectorate.)
(No. 148.)

SIR, High Commissioner's Office, Cape Town, 28th February, 1929

IN continuation of my despatch No. 138 of the 22nd February,‡ I have the honour to report that Advocate Buchanan and the Reverend A. Jennings, of the London Missionary Society, called on the Imperial Secretary to discuss the Khama Mineral Concession.

2. In the course of conversation Mr. Buchanan intimated apparently from inadvertence that he considered himself briefed by the London Missionary Society, and proposed to hand his opinion over to the Society and not to the Chief. The Imperial Secretary took advantage of this remark to observe that when the policy of His Majesty's Government was explained the Society would, no doubt, appreciate that it might not be in the interests of the natives to advise them to endeavour to secure the cancellation of the Khama Concession or to return the rentals (amounting to about £10,000, I understand) to the Company.

3. The Imperial Secretary explained that for many years the Imperial Government had not encouraged Concessionaires to carry on mining operations in the Native Reserves. The British South Africa Company had refrained from issuing prospecting permits to individuals, and it was largely owing to the careful and deliberate consideration given by the Government to native interests that the issue of a mining law had been so long delayed.

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* No. 28. † No. 26. ‡ No. 30.

4. They had also taken legal opinion with a view to ascertaining whether the Chief could terminate the Khama Concession by notice to the Company, and had themselves supplied the Chief with Mr. Feetham's opinion on this question. They had also refused to allow the Chief of the Batawana to renew the Company's Concession over that tribe's Reserve.

5. The attitude of the Imperial Government on this question of mining in Native Reserves had provoked criticism in numerous quarters, but so long as it appeared that there was any likelihood of the natives being seriously disturbed mining activity was not encouraged.

6. Recently however experience in Northern Rhodesia had shown that prospecting could be conducted by reputable companies not only without detriment but even to the advantage of native interests. In the light of this experience, and for other reasons, the Imperial Authorities began to consider whether it would not be better to draw up a mining law carefully safeguarding native interests and regulating mining operations rather than allow Chiefs to engage in doubtful and extremely expensive litigation with a view to terminating the Concessions, or to leave the companies free to exploit uncontrolled the minerals they had acquired from the Chiefs.

7. There was the further and important consideration that the weight of public opinion in South Africa would be directed against any policy designed to prevent the exploitation of the mineral resources of the Protectorate. Exaggerated tales of undeveloped mineral wealth would be circulated and there would be an increasing demand that the Territory should be handed over to some other Government able and willing to develop it.

8. The Secretary of State had also expressed the view that it was not in the interests of the natives themselves that they should be entirely shut off from the progressive influences that surrounded them on all sides, and preserved for all time as a primitive people, without hope of advancement of any of the advantages of civilization. It was thought that the better policy would be to encourage gradual contact with those influences subject to appropriate precautions so that if, and when, the time came for them to be governed by other administrations they would be able to hold their own with their more educated neighbours.

9. Finally there was the need for providing local employment for the young men. In the course of his interview with me on 21st January, the Chief complained that many natives went to work on the mines and in other places outside their country, and that they never returned but left their dependants destitute. The Chief had asked me to assist him to get these people to return or to support their relatives, but apart from providing remunerative employment in their Reserves there does not appear to be any remedy for this kind of desertion.

10. After having carefully reviewed these and other considerations the Imperial Secretary urged the London Missionary Society to consider very carefully the consequences before they encouraged Chief Tshekedi to take steps to terminate the Khama Concession by legal action. Such a challenge would without doubt be taken up by the Company, and expensive and possibly futile litigation might ensue. It might for instance be argued that under the Khama Concession the Chief disposed of his mineral rights to the Company, as the Concession states that the Chief "gives" (not leases) the mineral rights on certain terms, and throughout the Agreement the Concessionaires are spoken of as the "grantees." Mr. Feetham's opinion was apparently based on the argument that the Concession was a "lease" and therefore terminable by notice—but this view seemed open to dispute, and the Company asserted that they had been advised that Mr. Feetham's opinion could not be sustained.

11. It was more than probable that the Bamangwato Reserve contained no minerals of any consequence, and that prospecting might in a very short time prove this theory to be true and free the Reserve from mining operations, or at the worst confine those operations to small isolated areas. Further prospecting could then be prohibited without exposing the Government to the charge of being unprogressive on the grounds that the mineral possibilities of the Reserves had been exhausted or definitely located. Moreover villages, streams, pans, wood, and other ancillary rights were very carefully protected under the proposed Law and the Imperial Secretary directed the attention of Mr. Jennings to the very wide powers of intervention granted to the Resident Commissioner under the proviso to Clause 41. It was open to the tribe concerned to appeal to the Resident Commissioner to exercise his powers under this proviso, and it was unnecessary to add that he would intervene whenever it could be shown that the natives were being disturbed.

12. It was also explained that the days when prospecting was done by numerous amateur prospectors were past, and that these operations were now carried on by

expert geologists who employed up-to-date scientific methods entailing little if any disturbance of the surface as a whole. It was probable that, in order to conduct mining operations in the Protectorate, boreholes would have to be opened up in various places, and other valuable improvements effected. The natives might be given considerable employment, as only skilled foreign natives were to be admitted so long as adequate labour was available locally. Valuable markets might be provided for native cattle while under the draft Proclamation surface rights, native krauls, &c., were, as already stated, carefully protected. In these circumstances it was foolish of the Chief to suggest returning the £10,000 to the Company in return for cancellation of the Concession.

13. The Imperial Secretary finally suggested that if the London Missionary Society wished to help the natives, they should advise them to have faith in the policy and good will of the Government, rather than provoke the Chiefs into adopting obstructionist tactics, which though they might hamper progress would sooner or later excite public opinion into demanding the transfer of the Government into other hands. The Imperial Secretary discreetly hinted that Mr. Buchanan's opinion might be a useful weapon in the hands of the Government to extract even better terms from the Company, and he advised them to submit it to the Government.

14. Mr. Buchanan supported the suggestions of the Imperial Secretary and advised Mr. Jennings to withhold the opinion from the Chief and leave it to the Government to use its endeavours to get the best bargain for the natives. Mr. Jennings, who was at first inclined to be troublesome, said he concurred in this proposal, and assured the Imperial Secretary that he could rely upon his Society to work in harmony with the Government.

15. I propose to bring the opinion to the notice of the Company with a view to inducing them to agree to a reduction of the 25 year period, the allocation of a portion of their royalties to the natives, and land compensation, from the unalienated portions of the Tuli Block, for any land taken from the natives for mining sites, &c. I do not however think it advisable to remove the buffer between the Bamangwato Reserve and the Transvaal created by the Tuli Block.

I have, &c.,
ATHLONE.
High Commissioner

D 4014/29.

No. 33.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 2nd April, 1929.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 166.)

SIR, High Commissioner's Office, Cape Town, 11th March, 1929.

WITH reference to my despatch No. 136, Confidential, of the 22nd February,* I have the honour to enclose, for your information, a copy of correspondence with the Resident Commissioner, Mafeking, on the subject of the mineral concessions held by the Balkis Company in the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 33.

(Confidential.)
(No. 145.)

Resident Commissioner's Office,
Mafeking, 26th February, 1929.

MY LORD, I HAVE the honour to acknowledge the receipt of Your Excellency's Confidential despatch No. 337 of the 22nd February in regard to the mineral concessions held by the Balkis Company.

* No. 29.

By the same post I received the enclosed correspondence from the Resident Magistrate at Kanye.

I would suggest that the Resident Magistrate should reply stating that it is presumed that the Kanye Asbestos Company, Limited, are acting with the permission of the Balkis Company, and that they are aware of the terms of the mining concessions of which the Balkis Company are the holders, and that he should inquire whether their operations have yet progressed beyond the prospecting stage.

If the Company wish to have the protection of the law in regard to limited liability they should register their company at the Protectorate Deeds Office.

I have, &c.,
R. M. DANIEL,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

The Government Secretary,
Mafeking.

Resident Magistrate's Office, Kanye, B.P.

PLEASE see attached letter further to my report of the 22nd January, 1929, since when there have been no further developments.

I understand the sum of £5,000 was subscribed and not £25,000 as reported.

Kindly advise me as to the reply I should send to this letter.

A. L. CUZEN,
Resident Magistrate.

Kanye, 28th February, 1929.

The Kanye Asbestos Company, Limited,
17-20, Netherlands Bank Buildings,
Fox Street, Johannesburg,
11th February, 1929.

The Resident Magistrate,
Kanye,
British Bechuanaland.

SIR,

I HAVE to inform you that this Company was registered at Pretoria as a Public Company on the 14th December, 1928.

I shall be obliged if you will kindly advise me whether, in view of the fact that my Company is carrying out operations in the Kanye District of Bechuanaland, there are any formalities or regulations which should be observed by my Company.

I may mention that Mr. J. J. Griffiths, a certificated Mine Manager, has been placed in charge of my Company's operations at the property.

I have, &c.,
G. FLYNN,
Secretary.

Enclosure 2 in No. 33.

(Bechuanaland Protectorate.)
(Confidential.)
(No. 458.)

SIR, High Commissioner's Office, Cape Town, 11th March, 1929.

I HAVE the honour to acknowledge the receipt of your Confidential despatch No. 145 of the 26th February regarding the operations of the Kanye Asbestos Company, Limited.

I think that in the first instance the Government Secretary should inquire from the Kanye Asbestos Company under what authority it purports to be carrying on mining operations in the Protectorate. If the Company's reply indicates that such

authority emanates from the Balkis Company, and if operations other than prospecting appear to be contemplated, it will be necessary to consider what further action should be taken, having regard to the provisions of the concessions relating to selection and marking off of areas and the payment of rent and royalty.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate

D. 4239/29.

No. 34.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3.47 p.m., 5th April, 1929.)

TELEGRAM

[*Answered by No. 36.*]

No. 22. 5TH APRIL. Your telegram No. 21 of 14th March.* Mining in Bechuanaland Protectorate. Negotiations delayed owing to the Chief's reluctance to sign new Concession. Arranging conference with the Chief, Missionaries, and Advocate Buchanan, 22nd April. Not possible to hold conference earlier as Chaplin will be away, and his presence necessary to secure further benefits for natives, most important being corridors through Tuli Block to enable Bamangwato to water cattle on the Limpopo. Tribe attach greatest importance to this, and I feel that it will be difficult to reach agreement unless access to the river is offered, see my despatch No. 560 of 18th May, 1923.† Have you any objection if the Company prepared to surrender land for corridors which might be funnel shaped reaching considerable width as the distance from the river increases to provide necessary grazing *en route*. It will also be necessary to show the Chief and his advisers copy of the draft mining proclamation. If you approve, please telegraph authority immediately, it being understood that the proclamation is still subject to amendment.

Other questions, including de Beer's observations, being dealt with by despatch.—ATHLONE.

D. 4321/29.

No. 35.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 8th April, 1929.)

[*Answered by No. 39.*]

(Bechuanaland Protectorate.)
(No. 201.)

SIR, High Commissioner's Office, Cape Town, 22nd March, 1929.

I HAVE the honour to enclose herewith the final revised draft of Advocate Buchanan's opinion as to whether the Khama Concession can be terminated by the Chief giving the British South Africa Company one year's notice. If this opinion is brought to the notice of the Chief Tshekedi it seems very doubtful whether, in his present frame of mind, he would agree to sign a new concession. It seems evident from the legal opinions submitted by Messrs. Feetham, Blackwell, and Buchanan, and supported by Professor Lee, that the existing concession held by the British South Africa Company is scarcely worth the paper it is written on. I have therefore based my attitude in this matter on the assumption that, as indicated in your telegram of the 22nd April, 1926,‡ His Majesty's Government is morally bound to use its influence with the Chief to secure a new concession for the Company. For this reason the attitude referred to in my despatch No. 148 of the 28th February§

* No. 31. † No. 13 in Dominions (South African) No. 2.
‡ No. 55 in Dominions (South African) No. 2. § No. 32.

was adopted by the Imperial Secretary in his conversation with Advocate Buchanan and the Reverend A. Jennings.

2. The Imperial Secretary also inquired whether in the course of his discussion with Advocate Buchanan and Mr. Jennings, Chief Tshekedi had given any indication of the manner in which his tribe might be compensated for any disturbance or loss of land resulting from the conduct of mining operations. Advocate Buchanan said that if they could be given access to the Limpopo for the purpose of watering their cattle this would go a long way towards appeasing them. A reference to the High Commissioner's despatch No. 560 of the 18th May, 1923,* will show that the late Chief Segkoma also deplored the loss of frontage on this river. I therefore propose to use Advocate Buchanan's opinion to induce the British South Africa Company to surrender two or three V-shaped salients in the Tuli Block so as to provide corridors with sufficient grazing to enable cattle in the Bamangwato Reserve to be watered at the Limpopo. This may be difficult to obtain, and there is the risk that the Company might prefer to test the value of their concession in the Courts rather than surrender the land. In any event I anticipate considerable opposition from the European settlers to native cattle penetrating the Tuli Block. If, therefore, I am to obtain substantial land concessions it may be necessary to forego the percentage of royalty which you consider should be surrendered by the Company to the natives.

3. I enclose a copy of an opinion given by my Legal Adviser to the effect that he does not consider that the disabilities to which the Khama Concession seems to be subject apply to the Company's rights in the Bakwena Reserve nor to the Balkis Concession. I have communicated this information to Sir Drummond Chaplin as the British South Africa Company propose to negotiate for the purchase of the Balkis Concession.

I have, &c.,
ATHLONE.
High Commissioner.

Enclosure 1 in No. 35.

IN RE KHAMA'S CONCESSION TO THE BRITISH SOUTH AFRICA COMPANY DATED 25TH JULY, 1893.

Opinion.

THE point upon which I have to advise is as to whether the said Concession can be determined and, if so, in what manner.

Now both the Imperial Authorities and the Company appear to consider that Khama had the right to grant this Concession. Whether the Chief had any authority to grant any right that would be effective once he changed his mind seems very doubtful according to Native Law and Custom. In the case of *Dam's Estate v. Leyds N.O.* (1890) 3 S.A.R. 206, where an independent Native Chief granted a certain piece of land to W and subsequently with the consent of his Council he cancelled that grant and made a grant of the same land to D, it was held that the grant to D was good as against W.

However, be that as it may, in my opinion, by virtue of the Order in Council on 9th May, 1891, followed by the Proclamation of 10th June, 1891, as explained by Proclamation 36 of 1909, the law applicable to the true construction of the legal effect of the Concession in question is the law of the Cape of Good Hope on 10th June, 1891 (so far as same is *mutatis mutandis* applicable).

The interpretation of a contract depends on the "proper law of the contract." There is a presumption that the "proper law" is the law of the country where the contract is made and this presumption is specially strong where the contract is to be performed wholly in the country where it is made. See Dicey on *Conflict of Laws* 2nd Ed. p. 563. The construction therefore depends on the law of the Protectorate and that law, as is clear from the Proclamations referred to above, is the law of the Cape of Good Hope on 10th June, 1891.

The salient features of the Concession are as follows:—

(1) The Chief *gives* to the said *grantees* the sole and exclusive right to prospect.

* No. 13 in Dominions (South African) No. 2.

(2) The grantees undertake to pay to the Chief the sum of £25 per month on the discovery of gold.

(3) The sole and exclusive mining right is hereby *given* by the Chief to the grantees.

(4) The grantees to pay the monthly sum punctually otherwise agreement terminable after notice: when such rental shall no longer be payable: on payment of all *rent* due, plant, &c., can be removed by grantees.

(5) The land remains the property of the Chief.

(6) The Concession is declared to be the only mineral concession in existence: no other concession to be granted while the agreement lasts.

Now it is clear that the Concession does not deal with the dominium in the land, for the land remains the property of the Chief. Nor, in my opinion, was it a sale of the mineral rights in the land, for no price is fixed but only a monthly payment on discovery of minerals such payment being called rent. Moreover, if it were a sale the provision that no other concession should be granted would be superfluous.

Does the Concession confer upon the Company a right analogous to a personal servitude? It purports to "give" rights to the "grantees" and yet it speaks of "rent," so there can be little doubt that the Concession is ambiguous. In case of doubt the construction is against a servitude and the person setting it up must prove it: Innes, C.J., in *Willoughby's* case 1918 A.D. at p. 16. A contract must be construed against the person drawing it up: *Schorer Note* 379, *Voet* 18/1/27, and a restraint must be narrowly construed: *Robinson v. Randfontein Estates Ltd.* 1921 A.D. 168 at p. 188. Applying these principles of construction, the Concession, in my opinion, does not create a personal servitude. It is significant that no attempt has ever been made to register any servitude, cf. the remarks of Innes, C.J., in *Willoughby's case* 1918 A.D. at p. 19.

There remains the possibility that the Concession is a lease of the right to the minerals in the land, and this, in my opinion, is the true construction of the document. The law relating to mineral leases was discussed in the recent case of *Edwards, G. M. Co. v. Mamogode N.O.* 1927 T.P.D. 288. The Concession in the present case contains all the essentials of such a lease the only unusual feature being that no time of duration is fixed. But a lease with no fixed time of duration is possible, see *Van Raht v. Breda* 20 S.C. 73. That the Concession is in reality a lease is supported by the following considerations: the parties themselves call the payments made under the Concession rent and provision is made for cancellation on non-payment of such rent; the construction as a lease is less onerous on the promissor than that of a servitude; there is no provision against an assignment in the Concession (cf. Innes, C.J., in *Lazarus and Jackson's* case 1903 T.S. 499 at p. 506). Moreover, mineral leases are a common type of contract in South Africa.

The question remains as to when the Concession is terminable. It is clear law that in the case of ordinary leases for an indefinite period the lease can be determined on reasonable notice and that where the rent is paid monthly reasonable notice is a month's notice. See *Van Raht v. Van Breda* 20 S.C. 73. Any contract is terminable on reasonable notice where no time is fixed by the parties, see *Colonial Government v. Silver* 15 C.T.R. 501; *Hersh v. National Mutual Life Ass.* 1921 J.D.R. 601. In the special circumstances of this case and bearing in mind that a mineral lease is rather a special type of lease I feel that it would be safer to give a year's notice of termination of the agreement.

I have had the opportunity of considering the opinion given by Mr. R. Feetham (now Mr. Justice Feetham of international repute) and I see no reason to differ from his conclusions. Mr. Feetham does not specifically say that he is applying the law of the Cape of Good Hope as at 10th June, 1891, but his reasoning is in accordance therewith.

To summarise my conclusions, I am of opinion that the Concession must be construed according to the law of the Protectorate; that that law is the law of the Cape of Good Hope as on 10th June, 1891; that according to the law of the Cape the concession is a mineral lease; that it is terminable upon notice and that a year's notice would be a good notice.

I should add that this opinion is based on the assumption that His Majesty's Secretary of State duly approved of the Concession on 23rd November, 1898, as the Company alleges. Of course if such approval were not duly given, the whole concession would be invalid and of no effect in law. On the other hand any qualification, limitation or reservation contained in the approval would have to be given full effect

to. In spite of every endeavour to obtain the alleged approval from the records of Parliament and from the Imperial Secretary, up to the present I have been unable to ascertain the terms of such approval if ever given.

D. M. Buchanan.

Chambers,
15th March, 1929.

Enclosure 2 in No. 35.

Imperial Secretary, House of Assembly, Cape Town.

Mining Concessions in the Bechuanaland Protectorate.

As I understand that an opinion on this matter is urgently required, I have not been able to go closely into the opinions given on the Khama Concession. In the case cited from the Cape Courts (van Raht *v.* van Breda No. S.C. 73) the point at issue was not fully argued, and no authorities were cited, and I should have liked to see the "carefully reasoned opinion" of Professor Lee referred to in the Secretary of State's despatch of 9th November, 1927.

Assuming, however, that these opinions are correct (and having regard to the authority of those who gave them I should hesitate to differ from them), I am of opinion that the concessions now under consideration differ materially from the Khama Concession in respect of the terms governing their duration. In the latter there is no term fixing the duration of the concession. There is the usual provision that the grantor may cancel the concession on failure of the grantees to pay the monthly sum stipulated for. In the former concessions the consideration takes the form not only of a periodical payment in the nature of rental, but also of a royalty on the produce of mining operations, and it is a term of the concession that it is "to last so long only as the said sums of money both rent and royalty shall be punctually paid." This term, in my opinion, goes farther than merely to give to the grantor a right to cancel the concession on failure to make the required payments. It can only be reasonably interpreted as giving to the grantee a right as against the grantor to hold the concession so long as these payments are made. By a further term the grantee is allowed to terminate it on giving six months' notice of his intention to do so. There is no similar provision as to any right on the part of the grantor to terminate the grant on notice.

I am of opinion that these concessions cannot be terminated at the will of the grantor so long as the grantees make the payments prescribed and in other respects comply with the conditions of the contract.

Patrick Duncan.

19th March, 1929.

Imperial Secretary,

I am obliged for the opportunity of perusing this opinion.* I assume in regard to the concessions referred to me that it was competent for the Chief to make these contracts. On that assumption I adhere to my opinion as to the duration of the contract. The terms of the instrument as explained in my minute are such as to distinguish it as regards duration from the Khama Concession.

Patrick Duncan.

20th March, 1929.

D. 4239/29.

No. 36.

The Secretary of State to the High Commissioner.

(Sent 4.30 p.m., 11th April, 1929.)

Telegram.

No. 31 Your telegram of 5th April, No. 22.† I would have no objection to the proposed arrangement as regards Tuli Block, if matter can be amicably settled with parties interested, but I presume that steps will be taken to consult either the

* Enclosure 1 in No. 35. † No. 34.

European Advisory Council or representatives of the settlers in the Tuli Block before any promise is given to the Chief as to the surrender of land in the Block for the use of the natives, especially as I see from your despatch of 22nd March, No. 201,* that you anticipate opposition from the European settlers.

I appreciate that the publicity entailed by consulting the settlers will probably commit the Government to a policy of obtaining some alternative concession for Tshekedi if the scheme relating to Tuli Block has to be abandoned, and you will no doubt consider whether this should not be explained in advance to Chaplin.

I agree as to communication of draft Proclamation to Chief on understanding which you mention.—AMERY.

D. 5494/29.

No. 37.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 2.30 p.m., 2nd May, 1929.)

TELEGRAM.

[Answered by No. 48.]

No. 27. 2ND MAY. After protracted and disheartening negotiations there now seems prospect of reaching agreement between the British South Africa Company and the Chief, in regard to the terms of the proposed revised concession over Bamangwato Reserve. In addition to the two strips of land three miles wide giving access to the Limpopo, Company offer us choice of the following alternatives.

(*a*) Company prepared to assign to the Chief 10 per cent. of royalties and raise the annual payment to the Chief from £300 to £600 provided the rental payable to the Crown, under Clause 31, is substantially reduced—sixpence or one shilling was mentioned—and provided also that the £600 payable annually to the Chief is also deducted from the rental due to the Crown.

(*b*) Company prepared to assign to the Chief 10 per cent. of profits from mining operations in the Concession; this sum to be calculated in the manner formerly in vogue in the Transvaal, and to accept rental charge of two shillings per square mile, provided that the annual sum payable to the Chief remains £300 per annum, and provided that this annual payment is deducted from the two shillings rental due to the Crown under Clause 31.

Chief's legal adviser prefers alternative (*b*), and this arrangement is clearly most favourable to the Crown. Company probably prefer it because they would have to pay 10 per cent. of royalties whereas tax on profits is payable by the Company entrusted with the development of their mineral rights. It occurs to me, however, that in case of leasing proposition 10 per cent. of royalties would be the better proposition, but on the other hand principle at stake is that in the event of the discovery of valuable minerals the tribe should benefit.

I am consulting the Mining Expert by telegraph, and have inquired whether the former Transvaal method of assessing the profits is suitable, and, if not, what alternative method could be adopted bearing in mind the status and repute of the Companies involved.

Chartered Company also agree to limit period of the concession to 20 years to which the consent of De Beers will be necessary. The reserved area around Serowe has been adjusted to meet the wishes of the Chief, and special restrictions will be imposed to obviate the disturbance of the cattle-breeding area, and in the event of such disturbance being unavoidable provision is being made for liberal compensation to be awarded by the Resident Commissioner after hearing the representatives of the tribe and Company with final appeal from the award to the High Commissioner. Chief insistently demanded as condition of agreement cession by the Government of certain Crown Lands north of Nata, but was informed that the Secretary of State would not entertain the request as the Crown was not directly concerned in the dispute, and under no obligation to make any concession to the natives. It soon became evident that unless the Chief could obtain additional grazing, negotiations would collapse. Finally it was agreed, subject to your approval, that the tribe should be allowed to use the grazing to the north of Botletle and Nata River in order to conserve tribal grazing along those rivers for use during the dry season. It is to be clearly set down

* No. 35.

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in writing that permission to use this grazing is granted on the understanding that it can be withdrawn, at any time, on six months' notice without the Government assigning any reasons or being expected to entertain or hear any protestations of grievances or hardships suffered as a consequence of the cancellation of the grazing rights. I am definitely opposed to any servitude on, or alienation of this particular Crown land, but subject to the above understanding, strongly recommend your concurrence, as the land will if anything be improved by grazing.

Advisory Council will be consulted as to the land ceded in Tuli Block, and all mining revenue, including sum payable to the Chief, will be paid into the Trust Fund for the benefit of the tribe subject to Government supervision.—ATHLONE.

D. 5627/29.

No. 38.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 6th May, 1929.)

(Bechuanaland Protectorate.)
(Confidential.)
(No. 240.)

SIR, High Commissioner's Office, Cape Town, 16th April, 1929.

WITH reference to my Confidential despatch No. 166 of the 11th March,* I have the honour to enclose, for your information, a copy of correspondence with the Resident Commissioner, Mafeking, on the subject of mineral concessions held by the Balkis Company in the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 38.

(Confidential.)
(No. 217.)

Resident Commissioner's Office,
Mafeking, 23rd March, 1929.

MY LORD,

I HAVE the honour to acknowledge the receipt of your Confidential despatch No. 458 of the 11th March regarding the operations of the Kanye Asbestos Company, Limited, and to transmit herewith for Your Excellency's consideration a copy of the reply received from the Company to the inquiry which you desired should be addressed to them.

I would suggest that the Company be informed that they should undertake no mining operations until the concessionaires have selected and marked off one or more areas not exceeding in the aggregate 20 miles square or four hundred square miles in terms of the Concession.

I have, &c.,
R. M. DANIEL,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

The Kanye Asbestos Company, Limited,
Johannesburg, 18th March, 1929.

SIR,

I HAVE the honour to acknowledge the receipt of your letter of the 16th instant.

In reply to your inquiry, Mr. Richard Rowland of Kanye holds Licences and Certificates of Registration granted by Messrs. Balkis, Limited, giving him the exclusive prospecting and mining rights on certain claims in the Bechuanaland Protectorate, hereinafter mentioned.

* No. 33.

Mr. Rowland subsequently granted an Option of these rights, and the Option has since been acquired by this Company.

The following are the particulars of the areas:—

11 areas, Nos. 102 to 112 inclusive, of 30 claims each, of the concessions known as the Bangwaketsi and Kanye Mineral Concessions.

I shall be pleased to supply any further information you may require.

I have, &c.,
G. FLYNN,
Secretary.

The Government Secretary,
Resident Commissioner's Office,
Mafeking.

Enclosure 2 in No. 38.

(Bechuanaland Protectorate.)
(No. 623.)

SIR, High Commissioner's Office, Cape Town, 13th April, 1929.

I HAVE the honour to acknowledge the receipt of your despatch Confidential No. 217 of the 23rd March regarding the operations of the Kanye Asbestos Company, Limited.

2. It is not clear from the Company's letter that anything more than prospecting is being undertaken at present, but as it would appear from their letter that the option referred to applies to certain specified areas, I think that you might communicate a copy of the letter to the Balkis Company and ask to be furnished with full particulars as to the position of the Asbestos Company, and to be informed whether any, and if so what, specific mining areas have been selected under the concessions.

I have, &c.,
ATHLONE.
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

D. 4321/29.

No. 39.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Bechuanaland Protectorate.)
(No. 157.)
(Confidential.)

MY LORD, Downing Street, 7th May, 1929.

I HAVE the honour to acknowledge the receipt of your despatch No. 201 of the 22nd March* forwarding the final draft of Advocate Buchanan's opinion with regard to the concession held by the British South Africa Company in the Bamangwato Reserve.

2. As regards the reference in paragraph 3 of your despatch to the Company's rights in the Bakwena Reserve, I would invite attention to paragraph 2 (iv) of my Confidential despatch No. 41 of the 23rd January,† to which I assume you will in due course furnish me with a reply dealing comprehensively with the questions raised.

I have, &c.,
L. S. AMERY.

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* No. 36. † No. 26.

D 6001/29.

No. 40.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3 p.m., 11th May, 1929.)

TELEGRAM.

No. 31. 11TH MAY. Bechuanaland Mining and Khama Concession. Proposals in my telegram 2nd May, No. 27,* were submitted to Kotze who observed that the Company must have made mistake as disparity between the two alternatives was very great, 10 per cent. of profits being ten times greater than 10 per cent. of royalty and if imposed likely to render it impossible to raise the necessary capital required to exploit minerals. Company's Directors in London also informed Chaplin that cumulative burdens imposed were too onerous. Kotze considered that two or three per cent. of the profits or 25 per cent. of the royalties would be fair charge if profits were not reduced by amount required for amortisation in accordance with Transvaal Proclamation No. 34 of 1902. Compromise was reached with Chaplin under which Chief was persuaded to accept 5 per cent. of profits without amortisation reduction and the Government agreed to accept rental of one shilling per square mile provided the Company agreed to forego right to abandon the areas considered or found to be unmineralised. This arrangement would ensure certain revenue for the Government of £2,000 per year for 20 years, in place of £4,000 less £600 payable to the Chief, with a certainty that the latter sum would be rapidly reduced owing to the abandonment of unmineralised areas. In this connection it has to be remembered that under the previous arrangement £600 payable annually to the Chief would have been deducted from the two shillings rental to the Government and as £600 annually represents at two shilling rate an area of 6,000 square miles the Company could extinguish rental due to the Government by reducing its rights by abandonment to this area, a reduction which might be effected after brief preliminary survey of the mineral possibilities. Chief was naturally reluctant to surrender prospect of large portion of reserve being liberated from mining servitude at an early date by the abandonment of unmineralised country, but he was with great difficulty induced to agree, when I explained that although the Chartered Company was willing and anxious to abandon unmineralised areas, De Beers who had everything to lose and nothing to gain by this process, would certainly refuse to surrender their diamond rights over any reserve and it would be futile for the Chief to secure liberation of his country from the Chartered Company's mineral rights if the reserves were still subjected to the rights of De Beers to prospect for and mine diamonds.

Following is summary of provisions of the draft agreement:—

Begins.—(1) Company is granted exclusive right for 20 years to prospect for precious stones and minerals and metals throughout the reserve, provided prospecting not allowed in any proclaimed or public road nor within 200 yards of any village nor within defined areas near Serowe nor upon land under cultivation or used for irrigation or reserved by the Government for irrigation except with the consent of the Resident Commissioner and the Chief. Company to pay the Chief £600 annually in advance for the duration of the Concession and so long as mining is conducted under the Concession.

(2) Company is granted exclusive right to mine, subject to the provisions of the Mining Law, stones, gold, silver, platinum, copper, and all other minerals, over the whole Reserve subject to exclusions mentioned in Clause 1 for period of 20 years from the date on which the Bechuanaland Mining Proclamation is applied to the Reserve or any portion thereof and thereafter within such portion of the Reserve as may at the expiration of the period be registered as mining claims under any mining law in force, so long as mining is continuously and efficiently conducted thereon provided mining shall not interfere with defined areas or any proclaimed or public road, village or cultivated land, &c., without the written consent of the Resident Commissioner and the Chief and previous payment of compensation to the persons disturbed. Compensation to be assessed by three appraisers one appointed by the Chief, one by the Company, and the third by the Government, Resident Commissioner or Chief to have the right of refusal to allow such prospecting or mining as may interfere with defined areas or any road,

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* No. 37.

village, cultivated land, &c. Chief not to grant any other mining concession or right whatsoever.

(3) During the Concession or mining, Company to pay annually to the Bamangwato Trust Fund 5 per cent. of net profits of all mining operations in the Reserve after deduction therefrom of all amounts not being capital outlay actually expended during the year on winning and treating, or amounts so deducted to be calculated as prescribed in Section 3 of the Transvaal Proclamation No. 34 of 1902, but no deduction may be made by the way of allowance for amortisation capital.

(4) Failing the receipt of payment Chief after due notice to have the right to cancel the Concession.

(5) Prior to exercising any right under the Concession the Company to transfer to the High Commissioner in trust two strips of land in the Tuli Block, (*a*) land lying between Suka and Mochous Rivers, (*b*) strip of land four miles wide on the south bank of the Macloutsi River, provided if mining ceases in reserve within prescribed period of 20 years, other than by default of the Company, land to be retransferred to the Company.

(6) Company to have free of charge right to wood, water, and other easements actually required for prospecting operations subject to such conditions (including payment for timber), and restrictions as the Resident Commissioner after consultation with the Chief may deem necessary for the protection of natives.

(7) Company to compensate the Chief and Tribe for the loss of useful occupation and deprivation of grazing and water which may result from mining operations in cattle post areas. Whenever the Company desires to open mine in cattle post area Resident Commissioner to decide the extent, if any, of the disturbance, and what land, grazing, and water shall be given as compensation provided the Resident Commissioner may with the consent of the Chief award compensation other than land, grazing and water.

(8) Provides for entry into the Reserve of prospectors, engineers, and skilled Europeans, plant, machinery, &c.

(9) Prospecting to be carried out with the minimum interference with the tribe.

(10) All unskilled labour to be performed by the Bamangwato tribe. If these are not sufficient other native or coloured unskilled labourers shall only be introduced into the Reserve with the Chief's permission subject to the approval of the Resident Commissioner.

(11) Provides as to the good character of workmen and prevention of introduction of intoxicating liquor, &c.

(12) Subject to conditions to be prescribed by the Resident Commissioner and subject to such charge as may be provided by the Mining Law Company is allowed such land as the Resident Commissioner considers necessary for prospecting and mining operations. All land rights reserved to the Chief and all land used for mining, &c., to remain the property of the Chief.

(13) In order not to interfere with the beneficial occupation by the tribe of land Company agree that provisions analogous to Section 24 and subsequent relevant sections of the Southern Rhodesia Mining Law and Regulations in force on the 3rd of September, 1914, should be applied to mining operations in the Reserve. On the abandonment of rights to any portion of the Reserve land and mineral rights to revert to the tribe and be free from the terms of the Concession.

(14) No mining Concession to be granted to any other person for a period of 20 years.—*Ends.*

Copy has been handed to the Chief who has been informed that agreement on the lines indicated would in my opinion be fair and equitable and that my advice to the Tribe would be to consent thereto. He has been told that the draft is not to be regarded as final pending consultation with my legal and mining advisers and with you and that pending your decision no announcement should be made to the Tribe.

I hope you will not only feel able to approve the agreement which was reached after difficult and anxious negotiations but that you will use your influence with the Company's Directors in London to induce them to accept. I think you may take it that the Chief will accept unless unexpected opposition is encountered in Kgotla. Position as regards grazing rights in Crown lands remains as stated in penultimate paragraph of my telegram of 2nd May.*—ATHLONE.

* No. 37.

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D. 6127/29.

No. 41.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 12.56 p.m., 16th May, 1929.)

TELEGRAM.

No. 32. 16TH MAY. My telegram of 11th May, No. 31,* Khama Concession. Jennings and Buchanan have sent the following telegram to the London Missionary Society in England.

> *Begins*:—As a result of three weeks' negotiations here with the Imperial Secretary and representative of the Company draft Agreement being forwarded to the Secretary of State and Directors of the Company, by the Imperial Secretary by to-day's mail. New draft Agreement more favourable than the old one. The Chief strongly opposed to any mining in his Reserve which necessitates European penetration and occupation of his country and only entered negotiations on declaration of the Imperial Secretary that mining is the accepted new policy of the Government and must be carried out. Chief not satisfied that this is irrevocable policy of the Secretary of State and requests that his people's views on this subject be submitted to the Secretary of State before the latter approves the draft Agreement as requested by the Imperial Secretary by cable. Interview Dominions Office and ascertain if decision to immediately open mining operations in Khama's country irrevocable. Chief wishes to cancel the original Concession and stop mining at least for 20 years and develop agriculture and animal husbandry which is the natural development for his people. Request the Secretary to hold up final decision until further communication by mail leaving to-day fortnight. Jennings returning Kurrman.—*Ends.*

I understood that the Chief was favourably impressed by the draft Agreement and when he called to say good-bye the Imperial Secretary and I attributed the attitude of Jennings which when Clifford last saw him was also favourable, to missionary obstruction. I suggest that you should refuse audience to the London Missionary Society until you have received further information from me. In the meantime I consider it most important that no statement either of confirmation or denial of change in Imperial Government policy in regard to mining development of Native Reserves should be made until we have had time to communicate details of the position. —ATHLONE.

D. 6164/29.

No. 42.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 7.50 p.m., 16th May, 1929.)

TELEGRAM.

[*Answered by No.* 45.]

No. 33. 16TH MAY. My telegram No. 32, 16th May,† Khama Concession. With regard to telegram sent by Jennings to London Missionary Society I would refer to my despatch of 22nd February, No. 138,‡ and my despatch of 28th February, No. 148,§ in which I explained the reason(s) which had influenced my views and present attitude as regards mining in the Protectorate and expressed the opinion that if Native Reserves were closed to mining there would always be European agitation against the Government for allowing natives to lock up mineral wealth in the country, and danger that this agitation would develop into demand that territory be handed over to some other Government which would insist on mineral development, whereas if we limit prospecting to 20 years and thereafter confine mining to a few proved mineral areas we can (1) repudiate the charge of allowing mineral wealth to be locked up, (2) free bulk of Native Reserve from disturbance due to indeterminate and inefficiently conducted prospecting and mining operations, and (3) obtain revenue which

* No. 40. † No. 41. ‡ No. 30. § No. 32.

can be utilised for pastoral development and animal husbandry referred to in Jennings' telegram.

You have already expressed the view that natives best hope of retaining Reserves free from outside interference is for them to be encouraged to progress in order that when ultimately they have to be absorbed into a bigger state entity they may be able to hold their own.

I think it might be advisable for you to grant an interview to the missionary representatives and address them on the lines indicated above, at the same time urging them to aid and not to obstruct the High Commissioner's policy which has the support of the Imperial Government.—ATHLONE.

D. 6553/29.

No. 43.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 27th May, 1929.)

(Confidential.)
(No. 299.)

SIR, High Commissioner's Office, Cape Town, 10th May, 1929.

WITH reference to my Confidential despatch No. 240 of the 16th April* I have the honour to enclose, for your information, a copy of correspondence with the Resident Commissioner, Mafeking, on the subject of mineral concessions held by the Balkis Company in the Bechuanaland Protectorate.

I have, &c.,
ATHLONE,
High Commissioner.

Enclosure 1 in No. 43.

(No. 318.) Resident Commissioner's Office,
Mafeking, 29th April, 1929.

MY LORD, I HAVE the honour to acknowledge the receipt of Your Excellency's despatch No. 623 of the 15th April and to transmit herewith, for your information, a copy of the reply received from Messrs. Balkis Limited, Johannesburg, in answer to a letter addressed to them by the Government Secretary in accordance with Your Excellency's instructions contained in paragraph two of your despatch under reply.

I shall be glad to receive Your Excellency's further instructions in due course.

I have, &c.,
R. M. DANIEL,
Resident Commissioner.

His Excellency
The High Commissioner,
Cape Town.

23, Aegis Buildings, Loveday Street,
Johannesburg, 23rd April, 1929.

SIR, I HAVE to acknowledge your favour of 18th instant.

The Kanye Asbestos Company, Limited, is engaged in prospecting work on claims held by Mr. R. Rowland of Kanye so that the question of selecting specific mining areas does not arise.

The claims are held under Claim Licences approved by the Dominions Office.

I am, &c.,
D. P. C. BLAIR,
for Balkis Limited.

The Government Secretary,
Bechuanaland Protectorate,
Resident Commissioner's Office,
Mafeking.

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* No. 38.

Enclosure 2 in No. 43.

(No. 623.)

SIR, High Commissioner's Office, Cape Town, 10th May, 1929.

I HAVE the honour to acknowledge the receipt of your despatch No. 318 of the 29th April forwarding a copy of a letter from Messrs. Balkis Limited with reference to the activities of the Kanye Asbestos Company.

2. It would seem sufficient to acknowledge the receipt of the letter and to say that you note that the activities of the Asbestos Company are at present limited to prospecting.

I have, &c.,
ATHLONE,
High Commissioner.

His Honour
The Resident Commissioner
of the Bechuanaland Protectorate.

D. 6639/29.

No. 44.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 12.59 p.m., 28th May, 1929.)

TELEGRAM.

No. 41. 28TH MAY. My telegram No. 32* and my telegram No. 33† of 16th May. Please telegraph if I may inform the Chief in writing that the Imperial Government is satisfied that mining if carefully regulated should be undertaken in the (Bamangwato) Reserve and that it is in his own interest and that of the tribe to sign the revised Khama Concession.

Buchanan also asks for my advice on suggestion that the Chief should proceed to England to discuss this matter with you. I should like to have your authority to say that after most careful consideration of the question, both prior and subsequent to your visit to Bechuanaland, you are convinced that natives will not be disturbed by mining and that no useful purpose could be served by the Chief coming to London as the High Commissioner has kept you most fully informed of the views of the Chief and his advisers. I fear that proposal may be an attempt on the part of Buchanan and Jennings to visit England at the expense of the tribe as they would most certainly be engaged by the Chief to accompany him as advisers and I am most anxious to avoid repetition of futile and expensive Sobhuza excursion. It is natural for a young Chief to wish to visit England and Tshekedi is unlikely to have better excuse than this. I suggest that reply to this telegram should be in form which can be communicated to the Chief through his Counsel.—ATHLONE.

D. 6639/29.

No. 45.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 8 p.m., 3rd June, 1929.)

TELEGRAM.

[*Answered by No. 46.*]

No. 48. YOUR telegram 16th May, No. 33.† Letter has been received from London Missionary Society asking that decision with regard to mining in Bamangwato Reserve may be postponed until receipt of communication giving views of Chief which is due on 10th June. It seems desirable to defer any discussion with Society until terms of this communication are known, but it would be necessary to explain to Society that proper channel of communication for any representations which the Chief has to make is through Resident Commissioner and High Commissioner and that while we are ready to explain matters to the Society we cannot accept them as acting

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* No. 41. † No. 42.

for Chief. It is not clear from your telegram No. 32* whether Administration have received text of Tshekedi's representation, but if not, can you arrange to obtain copy and forward it with your observations with a view to eventual reply being sent through proper channel. It would be desirable that this should be done before discussion with Society. As regards your telegrams Nos. 40† and 41‡ there has not been time in existing circumstances to study draft Agreement in detail and in any case I should not wish to give definite instructions as to intimation to be made to Chief until I had received communication referred to above. In the meantime however I should be glad if you could discourage any idea of his coming to England.—AMERY.

D. 7987/29.

No. 46.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 4.3 p.m., 27th June, 1929.)

TELEGRAM.

[*Answered by No. 47.*]

No. 51. 27TH JUNE. Your telegram of 3rd June, No. 48§. Mining in Bamangwato Reserve. Have ascertained that the communication to the London Missionary Society referred to as having been due in London 10th June, is not from Tshekedi although he claims that it expresses his views. Chief has asked for personal interview with me which I have agreed to grant to him towards the end of July. Despatch is being forwarded to you by to-morrow's mail, which please await. Meanwhile I should be glad if you could send me copy of above-mentioned communication next mail so as to reach me before the interview takes place.—ATHLONE.

D. 7987/29.

No. 47.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 12.20 p.m., 5th July, 1929.)

TELEGRAM.

No. 58. YOUR telegram 27th June, No. 51.‖ It now appears that only further letter received by London Missionary Society is one from Chairman of their South Africa Committee, reporting his and Buchanan's negotiations with Imperial Secretary and that Society were under impression that communication containing Tshekedi's representations was being sent by Chief to me. There would seem to have been some misunderstanding but I propose now to await report of your interview with Chief.—PASSFIELD.

D. 8746/29.

No. 48.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 5.35 pm., 1st August, 1929.)

TELEGRAM.

No. 65. I HAVE been giving very careful consideration to your recent telegrams and despatches concerning mining in the Bamangwato Reserve. I could not allow any pressure to be put on the Chief to sign the revised Concession to the British South Africa Company. At the same time, I feel that it would be unfortunate if the discussions of the last few years regarding the Concession of 1893 continued indefinitely with a possible end in litigation, and that the Chief would be

* No. 41. † D. 6619/29: not printed. ‡ No. 44. § No. 45. ‖ No. 46.

well advised not to lose the opportunity which has now occurred of revising the 1893 Concession in a direction which seems likely to benefit the Tribe generally if mining development is carried out under it.

Precise terms of the new Concession will, in any case, require further consideration in the light of the correspondence forwarded in Harding's letter to the Imperial Secretary of the 27th of June,* and you will, of course, bear in mind that the provisions of Clause 5 are subject to conditions mentioned in my predecessor's telegram No. 31 of 11th of April, 1929.† I understand that under the Concession, as now drafted, payments of £600 per annum and of 5 per cent. of mining profits will continue not only during the twenty years of the Concession but thereafter so long as mining operations are conducted in the reserve.

I agree that the Bamangwato Tribe should be allowed to use grazing to the north of the Botletle and Nata rivers, subject to the conditions proposed in your telegram No. 27 of the 2nd of May,‡ except that it would appear sufficient to stipulate that the permission can be withdrawn at any time on six months' notice without the Government assigning any reasons and without compensation.—PASSFIELD.

D. 10848/29.

No. 49.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3rd September, 1929.)

(Bechuanaland Protectorate.)
(No. 444.) High Commissioner's Office,
MY LORD, Cape Town, 16th August, 1929.

I HAVE the honour to enclose herewith notes of an interview which I granted to the Acting Chief Tshekedi at Cape Town on the 7th August, and also an account of what transpired at a subsequent meeting on the 9th August.

2. The Chief spoke at considerable length and quoted frequently from the official papers and from the tribal records of past correspondence. It is evident that he has made a very careful study of the history of the relations of his tribe with the Imperial Government and the British South Africa Company. At times he laid emphasis on past incidents which seemed to have little or no bearing on the question at issue. Probably this was due to the legal complexion introduced into the negotiations by Advocate Buchanan. It became evident to me that the Chief was most reluctant to reject the advice of the British Government and was afraid to come to a decision on his own account in opposition to that advice but was obviously a little disconcerted when he was told that the matter was entirely one between himself and the British South Africa Company and he sought throughout the interview to prove that the Imperial Government was largely to blame for his father's action in granting the Company a Concession over the mineral rights of his Reserve; the implication being that since the Imperial Government was responsible for the present state of affairs it was therefore under an obligation to get him out of his difficulties, and although I explained to him that having reached a favourable compromise with the Company on his behalf, the decision now rested with him, he persisted in his wish to be allowed to proceed to London to interview the Secretary of State.

3. You will observe that in accordance with your instructions I did my utmost to dissuade him from this line of action but it appears to me that we are going to have a repetition of the Sobhuza business all over again and I am inclined to think that Advocate Buchanan will prove financially as exacting as Mr. Manfred Nathan. But although I think the Chief will probably take his legal adviser to London I very much doubt whether he will have recourse to litigation against the advice of the British Government. My reason for saying this is that he is shrewd enough to realise that however objectionable mining may be to his people its consequences fade into insignificance when compared with the disaster which he feels sure would overtake his people if the Bechuanaland Protectorate were transferred to the Union. He is satisfied that if such an event took place the Union Government would appropriate the mining rights of the territory in much the same way as they appropriated certain mining rights in the Cape Colony. It will be noted in this connection that one of the principal reasons why he wishes to terminate the present Concession is because he thinks that in the event of the govern-

* D. 7781/29: not printed. † No. 36. ‡ No. 37

ment of the Protectorate being entrusted to the Union he will be in a much stronger position if the mining rights are the exclusive property of the tribe. There is much to be said for the Chief's line of reasoning though I doubt if he appreciates that failure to develop the minerals in his territory may lead to a recrudescence of the agitation amongst the European population for transfer to the Union. It will be remembered that when Mr. Thomas visited South Africa the Europeans urged the British Government to adopt a forward policy in the Protectorate or, failing that, to hand the country over to the Union. Their grievance against Imperial rule in those days was that the Bamangwato were allowed to harbour lung sickness and that nothing was being done to utilise the mineral wealth of the country as the best means of ensuring general development. It almost seems as if the active measures taken by the Government have effected the eradication of lung sickness, but the Advisory Council has been led to believe that a mining proclamation will be promulgated in the near future, and I fear that if the issue of the proclamation is delayed much longer, or if the Bamangwato Reserve is removed from its scope, the European population will once again become discontented and we shall be faced with all the old difficulties which culminated in the petition to His Majesty the King.

4. It seems to me therefore that the only prospect of reaching a settlement of this difficult question would be to grant the Chief the interview for which he asks. It is possible that the personal assurances of the Secretary of State may do something to calm his fears, though I am inclined to think that he will make a greater effort to secure a definite undertaking that the government of the Protectorate will not be transferred to the Union, than to terminate the Concession to the Chartered Company. You will observe from the enclosures that the Chief raised the question of transfer to the Union but I was unable, of course, to give him any more definite undertaking than that which has been given by various Secretaries of State to his predecessors, namely, that the Chief and the tribe will be consulted before the administration of the Protectorate is transferred to any other Government.

5. During his recent journey round the Makarikari Lake the Imperial Secretary visited some of the remote cattle posts which are seldom seen by Europeans or by the Administrative Officials and the conditions he observed in these parts, particularly in regard to the position of the Masarwa, gave some cause for anxiety. There is no doubt that some of these primitive people are servants of the Mangwato and live in conditions, which even if they are not analogous to slavery, might prove embarrassing if they were given publicity. It is difficult, however, in the circumstances to arrive at any solution of the problem which confronts the Administration in its desire to improve the condition of these people. That the Masarwa are "subservient" to their Mangwato "masters" seems unquestionable but it is a moot point whether they could improve their position by joining the few nomads who roam about in the Crown lands in absolute freedom. None of these latter appears to possess cattle or small stock of any description and it is more than probable that they have a harder struggle for existence than the Masarwa who herd cattle for the Mangwato and receive in exchange a certain amount of milk which is of no use to the absentee owner. The only practical way out of the difficulty would appear to be, (*a*) to provide other employment or means of livelihood locally, or (*b*) to set aside a portion of the Crown land and provide a certain number of small stock for those Masarwa who are anxious to live an independent existence. The present position is that they have in the Crown areas plenty of land on which they could settle but they have no livestock nor any means of acquiring it. It seems quite impracticable for the Government to purchase stock in order to found a colony for Bushmen who become dissatisfied with their present subservient position under the Mangwato. On the other hand something will have to be done to improve the conditions of these Masarwa which, however innocuous in themselves, are incompatible with British ideals and might be exploited by a discontented European population for the purpose of embarrassing the Government or effecting a political change. It seems to me that strictly controlled prospecting and mining would offer the Bushmen opportunities of local employment, enable them to acquire cattle of their own and by bringing them very gradually in touch with civilisation ultimately effect their emancipation. The process may not be devoid of serious disadvantages but it seems to me to offer the only practical solution and to provide a means of inoculating the native inhabitants against the evils which result from a too sudden contact with civilisation.

I have, &c.,

ATHLONE,

High Commissioner.

34

Enclosure in No. 49.

NOTES OF INTERVIEW BETWEEN HIS EXCELLENCY THE HIGH COMMISSIONER AND CHIEF TSHEKEDI AT GOVERNMENT HOUSE, CAPE TOWN, 7TH AUGUST, 1929.

Present:

His Excellency the High Commissioner.

In attendance:

The Resident Commissioner of the Bechuanaland Protectorate (Lt.-Col. R. M. Daniel, C.B.E.).
The Imperial Secretary (Captain the Hon. B. E. H. Clifford, C.M.G., M.V.O.).
The Assistant Imperial Secretary (Mr. S. Eales, C.B.E.).

The Chief Tshekedi, Acting Chief of the Bamangwato, who was accompanied by Nonofhan Motshwaedi, Duncan Maithoame, Gabolebywe Dinti.

Upon the High Commissioner inquiring if the Chief had anything new to state, anything fresh, Tshekedi said: "I have some few words to say."

TSHEKEDI: I am quite pleased for the kind permission granted to me to come and speak here. The thing I wish to say is that although this discussion took a long time I told the Government I objected to mining taking place in my country. We object because we know that when mining takes place in a country it won't be a nation. We know we can uplift ourselves by means of cattle not by means of mining. Could the Government tell him of a people who when the Europeans came into the country did not scatter? I think the Government has been our stay for many years, and there are many illustrations to show that mining in the Native Reserves is not good. Firstly I start with the discussions in 1895. The Chief read the following paragraph from the Colonial Office letter to Chiefs Khama, Sebele and Bathoen of the 18th November, 1895, Parliamentary Paper (C. 7962):—

> "First as to white people living in or coming into your country. In the letter to Mr. Willoughby of the 24th of last month, Mr. Chamberlain gave you the law as to concessions, that is that no concessions are legal unless they are approved by the Secretary of State. Now the people who hold approved concessions must, of course, be allowed to use them but Mr. Chamberlain is anxious that your country should be kept as much as possible for your own people and therefore if any more white men come to you seeking concessions, or land, you should at once report to the Queen's officer and ask for instructions."

IMPERIAL SECRETARY: In that very letter it says that those who have concessions must be allowed to use them.

CHIEF: I have seen what the Secretary of State has said and I approve of the concession. I only wish to speak of what the Colonial Secretary said.

In 1923 Chief Khama told the Government that he wanted to cancel the 1893 Concession. During the same year Chief Khama died, but his son took the same position with the Government. We see the Government helping Chief Sekgoma. I know that in that year the Government took up the question of helping the nation.

The Chief quoted from a letter of 28th March, 1923, from Sir James Macgregor to Chief Sekgoma, and from a further letter 26th May, 1923, when the Chief was informed that the High Commissioner had asked the Secretary of State to take up the matter with the Company.

From this letter I find that the Government was helping Chief Sekgoma to terminate the Concession. The Government did not tell Chief Sekgoma that he could not terminate the Concession.

The Chief referred to the report of a meeting of the British South Africa Company in 1924 when the Chairman said that the Secretary of State had intimated that the carrying out of mining operations in the native reserves was undesirable in the interests of the natives.

From this letter I know that the Government has allowed Chief Sekgoma to consider the termination of the Concession, although the Government knew it was approved. In 1924 the Government was opposed to people who wanted to mine in the Native

Reserves. The Chief read from the letter written by the Imperial Secretary to Messrs. Jennings and Buchanan of 30th April, 1929, as follows:—

> "In the first place the Company has no special favoured position in the Bamangwato Reserve except such position as it has acquired from the Chief Khama, and it is not within the power of the Crown to cancel indeterminate concessions. The Crown refused to allow the Chief of the Batawana to renew the Concession over his reserve when it expired, and is now endeavouring to negotiate for the Bamangwato a terminable concession in lieu of the perpetual rights granted to the Company under the Khama Concession."

In that letter I find that when the Chief of the Batawana wanted to renew the (Moremi) Concession, the Government refused. What I am surprised at is that if this mining was going to help us why didn't it help the Batawana? Again, if mining was doing good in the country why did the Government want to "lessen" that Concession? From this it is plain that the Government sees that mining in our country is not all right, and it (mining) cannot help us in any way. Although I am talking like this, I know I shall be told that the Concession was granted by my father in 1893, and that if this Concession did not exist the Government would be willing to help. I will say that though Chief Khama granted this Concession he never agreed to it. If he had not agreed to this Concession mining would still have taken place. I know of only one Concession, and that was granted to the Bechuanaland Exploration Company. The British South Africa Company Concession really started in 1889, as in that year the British South Africa Company were given the Royal Charter.

The Chief quoted Section 24, paragraph (v), of the Royal Charter, which empowered the Company "to carry on mining and industries and to make concessions of mining forestal and other rights." When these words were spoken Chief Khama was told nothing about it.

IMPERIAL SECRETARY: It does not say that they could mine without a Concession, and the Charter refers to the whole sphere of influence and not to Bechuanaland only or particularly.

(White Book African (South) No. 302, page 51.)

CHIEF: I know it was said they could mine without a Concession. (Letter 16th December, 1889, from Sir S. Shippard to Khama read.) This Concession was made during the life of Sir Sidney Shippard and Chief Khama. (Extract from reply to Khama read.) (Also Sir S. Shippard's reply of 22nd April, 1890, and Khama's further letter.)

Khama said if he co-operated with the British South Africa Company, it was because he was told to do so by the Government. From this it is clear that if Chief Khama had refused the Concession the Government would still have the right to mining in the country.

Chief here read letter from Imperial Secretary's Office of 29th April to Mr. Buchanan.

This letter and the other letters show that the British South Africa Company was helped by the Government to get a concession. This makes me hesitate when I hear that the Concession was made by my father. He signed the Concession, but he was told he was helping the British Government at their request.

Now I know these two things. The Chiefs who came before me said they were afraid of coming under the Union. I will not talk long about these things, because I have not come to speak about them. I know if I speak about these things I do not speak alone; there are other Chiefs. We all want not to come under the Union. I know once we come under the Union the minerals which we now have will go to the Government. The minerals will be for developing the country. If the right to minerals goes out from us it will not help us.

IMPERIAL SECRETARY: The Concession is for 20 years, and goes back to the Chief.

CHIEF: I know that; but what I say is that *once* we come under the Union it will not come back to us. This is the law.

I know that the Concession was made by the Government and Chief Khama and not by Chief Khama alone. The Government is our adviser and the Government is our helper. I have shown that the Government say that mining won't help the native people, and that the Government knows that the Concession cannot be terminated; they should give us a way of living. The Government believes as I believe, that mining will take away our land. The Government should therefore help us to get other land. I should like to know what will be done about land, and for that request I should like personally to meet the Secretary of State.

IMPERIAL SECRETARY: You would not lose any land; you would get more. You will get land on the Limpopo.

CHIEF: It is only a small piece, not as large as my country.

IMPERIAL SECRETARY: No one is going to take his country from him.

CHIEF: Once the white people come the black men never stay. Once mining takes place in my country we cannot come back.

IMPERIAL SECRETARY: There is a lot of mining in Southern Rhodesia and yet all the tribes are together in their Native Reserves.

CHIEF: I know mining takes place in Barotseland, and the Barotse come to my country in hundreds every year. They come in hungry and naked and I ask my people to employ them.

IMPERIAL SECRETARY: But that is not because of mining.

CHIEF: At present we have no mining in our country and we live a comfortable life.

IMPERIAL SECRETARY: They have not started mining in Barotseland. When they do all these people who come to the Chief's Reserve will find employment in their own country.

CHIEF: There is mining also in Rhodesia, but the natives of Rhodesia sometimes come to my country and I have not heard any one of them say that mining helps them. My uncles were in Rhodesia but they came to my country.

IMPERIAL SECRETARY: The Rhodesians come to the Chief's country to-day in order to go to the Union for mining. They want more mining, that is what they are after. The Chief knows that. They are on their way to the mines.

CHIEF: Some left Rhodesia because of the mines. Some of his people in Johannesburg said when they heard that the Chief was going to allow mining that the Chief is selling their country. I humbly ask that I should meet the Secretary of State and lay before him my complaints to tell him that I do not see the use of mining.

IMPERIAL SECRETARY: The Colonial Secretary has heard in the past all that the Chief has said and His Excellency will shortly speak to him upon that subject.

CHIEF: I was told I would meet His Excellency before any final decision was come to.

HIS EXCELLENCY read his reply to the Chief as follows:—

Reply of His Excellency the High Commissioner to Chief Tshekedi, Acting Chief of the Bamangwato, at Government House, Cape Town, 7th August, 1929.

CHIEF,

As you know the Chief Khama in 1893 granted the British South Africa Company a Concession to search for and win precious stones and minerals and metals throughout the Bamangwato Reserve. This Concession received the approval of the British Government and there is no doubt that Chief Khama fully intended that the Company should be allowed to exercise the rights which had been granted to them.

For various reasons, which I need not refer to now, the Company did not immediately proceed to exercise its rights. Subsequently, however, it decided to exercise these rights and in order to facilitate the conduct of mining operations the Government was asked to issue a Mining Proclamation. This Proclamation was drawn up, but its terms were not satisfactorily settled, and it was temporarily abandoned.

The Company however at one time undertook mining operations on its own account, as it was perfectly entitled to do, and neither the Chief Khama nor the Government intervened since both recognised that these operations were sanctioned by the Concession granted by Chief Khama.

The 1893 Concession was unsatisfactory in a number of respects. For example it was a perpetual Concession. That is to say, the British South Africa Company had the right to conduct mining operations in the Reserve at any time and for all time. The Government wished to limit the Concession to 20 years so as to compel the Company to exercise their mining rights and confine their operations as soon as possible to mineralised areas. This the Company was reluctant to do and the Government accordingly asked its Legal Adviser, Mr. Feetham, whether it would not be possible to limit the duration of the Concession. Mr. Feetham studied the terms of the Con-

cession and informed the Government that in his opinion it could be terminated at a year's notice. This opinion was communicated to the Chief Sekgoma for his information. This opinion has, as the Chief knows, been supported by Mr. Advocate Buchanan. The Company has also taken legal opinion and is advised by its Lawyers that the Chief has no power to shorten or cancel the Concession.

As for these legal opinions it is impossible to say who is right without taking the matter to Court.

The Government does not advise the Chief to take this course. If he does so he might lose his case and find his country as a consequence subjected to inadequately controlled mining operations, *not for a few years, but for all time.* It is true that he might win his case and thereby free his country altogether from mining. But the Government thinks this course is too risky and considers the consequences involved by failure too great and the advantages to be gained by success too small; since as the Chief knows the Government does not share his view that any disturbance will be caused to his people provided mining operations are conducted under the safeguards of the new Concession and the new mining law, of which many provisions are designed to protect native interests. If any land is required for mining it will be only very small areas and the Government will see that the tribe receives liberal compensation for them.

Mining has already been undertaken at the Bushman Mine and the tribe has suffered no ill effects. It is doubtful whether many of them knew or know to-day that mining has taken place in their country. To-day prospecting is carried out by small parties of trained men, geologists they are called. They travel through the country with a few boys and cannot possibly cause disturbance. The Imperial Secretary has just returned from leading a big expedition through part of the Chief's country and no disturbance has been caused. The people were not alarmed; they were pleased to see the motor lorry even in remote places in the Crown lands. The Chief can safely assure his people that they will not be disturbed. It was not a mining expedition but the Geologist who accompanied the Imperial Secretary informed him that amongst the cattle posts along the Nata and Botletle Rivers there were not only no valuable minerals but no minerals at all other than limestone, which is no good for mining.

I will now speak to the Chief regarding the choice which lies before him.

1. If he gives notice of his desire to terminate the agreement the Company will without doubt go to the Courts.

(*a*) If the Chief wins the case he will put a stop to mining in the Reserve and lose valuable benefits for his tribe to which I will refer later.

(*b*) If he loses the case the Company will proceed to mine in his country under the old agreement and they will be entitled to continue to mine there for all time and will not be subject to the restrictions contained in the new contract.

2. If he signs the new contract he and his people will enjoy the following benefits:—

(*a*) Mining operations will be strictly supervised so as to avoid disturbance of the people. Mining near villages and on lands, or land reserved for irrigation, will be prohibited except with the consent of the Chief.

(*b*) The Company will pay the Chief £600 annually while the Concession lasts or mining continues instead of £300 a year as formerly paid.

(*c*) The Tribe will be liberally compensated for any small areas required for mining.

(*d*) During the Concession, or so long as mining continues, the Company will pay each year to the Bamangwato Trust Fund five per cent. of the profits of all mining operations in the Reserve.

(*e*) The Company agrees to transfer to the High Commissioner for the tribe two pieces of land in the Tuli Block giving access to the Limpopo River.

(*f*) The Company to pay for timber used for mining.

(*g*) The Company to compensate the Chief in land, grazing, or water, for any disturbance to land, grazing, or water, caused by mining in cattle post areas.

(*h*) Unskilled labour to be performed by Bamangwato so long as there are sufficient labourers available. Other unskilled labour only to be introduced when necessary and subject to the Chief's permission.

(*i*) Only workmen of good character to be employed and the introduction of intoxicating liquor prohibited.

(*j*) All land used for mining to remain the property of the Chief.

(*k*) Mining land which is abandoned to revert to the Chief.

In addition to these very valuable concessions the Government will agree to allow the tribe to graze cattle in the Crown lands north of the Botletle and Nata Rivers subject to six months' notice.

It will probably be necessary to make some minor alterations to the new Concession, but these will be fully discussed with the Chief.

I believe, Chief, that you desire to come to the best settlement for your tribe. Doubtless you may be anxious lest it be said that while you were Regent mining was allowed in your Reserve. On the other hand it is quite probable that you will observe mining going on in the other Reserves to the benefit of the inhabitants, and people will say that the tribe has lost the opportunity of making a good agreement with the Company because they would not take the advice of the Government.

I think I have placed clearly before you what you stand to lose and to gain. I have obtained the best agreement possible from the Company and have even offered you grazing in the Crown lands, although the Government is under no obligation to make valuable concessions to the tribe in order to help the Chief to obtain better terms from the Company. I have told you that I strongly advise you to sign the agreement. You have also asked for assurances from the Secretary of State. I have accordingly telegraphed to London, and Lord Passfield, who has succeeded Mr. Amery, has authorised me to say that, while he wishes you to choose freely the course you think best and desires you to understand that he does not wish to put any pressure on you to sign the new Concession, he nevertheless agrees with me that you would be well advised not to lose the opportunity which has now occurred of revising the 1893 Concession in a direction which seems likely to benefit the tribe generally if mining development is carried out under it.

Those are the actual words the Secretary of State used and they deserve your careful consideration. I know you are being asked to make what you rightly regard as an important decision. I want you to understand that the Government is your best friend and was the friend and trusted adviser of your father and the late Chief Sekgoma. I and the British Government advise you from experience of what is best for you and your people.

The new draft agreement, of which you have a copy, has been drawn up after long and difficult negotiation. The Government feels it has now placed the position clearly before you and has done all that it can do on your behalf. The matter now rests between you and the Company. But after all the trouble which has been taken to reach a settlement the Government could not carry on further negotiations, and in any case would not be able, in the event of your failing to accept what I regard as a most favourable offer, to prevent the Company from exercising its mining rights in the Reserve under the old Concession. If you wish to dispute their right to mine in your Reserve you can only do so by going to the Courts—a very risky proceeding which I do not advise.

CHIEF asked if this is the final decision.

HIS EXCELLENCY: That is the advice the Government gives you. The decision rests with you.

CHIEF: I can see it is advice. I know the policy of the Government from 1889 to 1893 that the Government wanted to help Khama with the Concession. In 1923 the Government did not want mining in the Native Reserves and I know the Government told Chief Sekgoma that they would help him to terminate the Concession.

IMPERIAL SECRETARY: No, the Government did not say it would do so, nor advised him to do so. The Legal Adviser's opinion was that the Concession could be terminated.

CHIEF: The letter from Sir James MacGregor said that he would send the matter home.

IMPERIAL SECRETARY: The opinion is that there is only one way to cancel the Concession, and that is to go to law. The Government does not advise that.

CHIEF: I cannot go further in this matter. The Colonial Secretary wished to terminate the Concession.

IMPERIAL SECRETARY: The Government cannot do so even if it wished to. You were never told that the Government thought it could cancel the Concession. The Government only thought that the old Concession was a bad one. But the Government knows that it cannot cancel the old Concession except by going to law. I admit the Government is opposed to the old Concession.

CHIEF: I do not say that the Government would terminate the old Concession. The Government said it would try. From 1889 to 1893 the Government policy was

that there should be mining in the country, and the Government policy from 1894 was that mining was no good.

IMPERIAL SECRETARY: The Government policy was that mining should be subject to strict control, not that it was no good; that is under the existing Concession, and under the existing Concession it still believes that.

CHIEF: The Imperial Secretary told me in the High Commissioner's Office that from 1924 the Government policy was not to have mining in the Native Reserves.

IMPERIAL SECRETARY: Not to have mining under the old Concession.

CHIEF: If mining can take place in my country, before it starts I should like to see the Colonial Secretary.

HIS EXCELLENCY: I do not think there is any necessity for the Chief to see Lord Passfield. He knows the Chief's views.

IMPERIAL SECRETARY: His Excellency has already read the message.

HIS EXCELLENCY: The Secretary of State does not want to put any pressure whatever upon you.

CHIEF: I will reply after I have had a copy to read.

HIS EXCELLENCY: The Chief, I think, rather thought that we had changed our views. But we have not.

CHIEF: I know it is your advice, but he has not said whether he wants mining or not.

IMPERIAL SECRETARY: Read out again Lord Passfield's advice. He advises you. He won't do anything more than advise you. The policy of the British Government does not really enter into this question. The British Government says the Company is entitled to mine in the reserves under the old Concession until it is cancelled, or under a new Concession.

CHIEF: The Government at present has no policy.

IMPERIAL SECRETARY: The British Government does not like the Company having a Concession which was permanent, allowing them to prospect in the country for all time.

YOUR EXCELLENCY, Hostel, Keerom Street, Cape Town, 8th August, 1929.

I WISH to thank Your Excellency for granting my request for an interview and for the kind manner in which you received me yesterday.

Further, I have to thank Your Excellency for the memorandum prepared prior to the interview and handed to me thereat expressing Your Excellency's views on the merits of the proposed new agreement with the Chartered Company; but Your Excellency will observe from the shorthand notes of my remarks yesterday morning that it was my earnest desire to discuss the new policy of the Imperial Government in reference to opening up the Bamangwato Reserve to mining together with the larger subject of the future relationship of my country to the Union of South Africa, personally, with His Majesty's Secretary of State, Lord Passfield, in London, and this was the main object of my seeking the interview with Your Excellency.

I await Your Excellency's reply to my request which I earnestly hope will be granted.

I have, &c.,
TSHEKEDI KHAMA,
Acting Paramount Chief of the Bamangwato Tribe.
(Bechuanaland Protectorate).

To His Excellency
The High Commissioner,
South Africa.

Further Reply of His Excellency the High Commissioner to the Chief Tshekedi, Acting Chief of the Bamangwato at Government House, Cape Town, 9th August, 1929.

CHIEF,

I HAVE considered carefully all that you said at your interview with me on Wednesday. I think I am correct in saying that the object of your remarks was to convince me that—

(1) Colonial Office letter of 18th November, 1895, states that "Mr. Chamberlain is anxious that your country should be kept as much as possible for your own people" and that this was the policy of the British Government.

(2) The Chief Khama signed the 1893 Concession granting minerals to the British South Africa Company because he understood that it was the wish of the British Government that he should sign although he himself was opposed to mining in his country. Correspondence between Khama and Sir Sidney Shippard was quoted to show that Khama offered to assist and co-operate with the Queen's Government but not with the British South Africa Company.

I understood you to say that the British South Africa Company was given the right to mine without a Concession quoting Section 24 (v) of the Royal Charter which empowers the Company "to carry on mining and industries and to make concessions of mining, forestal, and other rights."

Briefly stated, your argument was that the 1893 Concession was made by the British Government and Khama and not by Khama alone.

(3) Policy of the British Government from 1893 to 1923 was in favour of mining in Native Reserves.

(4) In 1923 Government policy appeared to change. You gave the following reasons for this view:—

(*a*) Khama and Sekgoma both asked the British Government if anything could be done to cancel the Concession and on the 28th March, 1923, Sir James Macgregor sent Sekgoma Mr. Feetham's opinion and suggested that he should communicate his wishes in regard to it to the Government.

(*b*) On the 26th May, Sekgoma was informed that the High Commissioner had asked the Secretary of State to "take up the matter with the Company."

(*c*) In the British South Africa Company's Report of 1924 the Chairman stated that the Secretary of State had intimated that mining operations in a Native Reserve were undesirable in the interests of the Natives.

(*d*) A letter from the Imperial Secretary to Messrs. Jennings and Buchanan stated that:—"The Crown refused to allow the Chief of the Batawana to renew the Concession over his Reserve when it expired and is now endeavouring to negotiate for the Bamangwato a terminable Concession in lieu of the perpetual rights granted to the Company under the Khama Concession." Your argument was, apparently, that if the Government was opposed to mining in the Batawana Reserve why did it think mining was good for the Bamangwato.

(5) The Chief then referred to the Act of Union and said that the Chiefs and people now and in the past were opposed to going into the Union. If by any chance they went into Union they would probably lose their minerals but their position would be stronger if there were no Concession.

(6) The Chief said he would like to interview the Secretary of State to put these views before him.

I shall now answer any points the Chief has made which were not fully explained in my reply on Wednesday.

In regard to the first point referred to above, I fear, Chief, that you have been inclined to emphasise that portion of the Colonial Office letter of the 18th November, 1895, which refers to the desirability of reserving your country as much as possible for your own people instead of taking into consideration the general sense of the letter. It is clear to me that Mr. Chamberlain was merely warning the Chiefs against giving Concessions to any white man who may come along and ask for them. He was careful, however, to observe that those who hold Concessions which have been approved by the Secretary of State should be allowed to make use of them, that is to say, the policy of the British Government is not opposed to mining in Native Reserves in principle but that if mining is permitted in Native Reserves it should be carefully supervised and should be controlled by approved Concessions. This attitude of the British Government has not, as you seem to think, undergone any serious change, but of late years and particularly since it was decided not to entrust the administration

of the Bechuanaland Protectorate to the Company, as was done in the case of Southern Rhodesia, the Secretary of State has come to the conclusion that certain provisions in some of the Concessions are open to serious criticism especially if they were exercised by the Company in a private instead of in an administrative capacity.

When the Batawana Concession expired the Secretary of State refused to allow the Chief to renew it, because at the time the whole question of mining in the Bechuanaland Protectorate was under consideration and the terms of all Concessions in the Protectorate were being closely examined with a view to deciding in what respects their provisions were open to objection.

I do not propose in this reply to discuss the British Government's responsibility, if any, for the Concession granted by Khama in 1893 but when the Chiefs Khama and Sekgoma expressed the wish to have the Concession cancelled its terms were carefully examined and the Government formed the opinion that it was open to objection on the ground that it was not concluded for any definite period, but might remain in operation for all time. The High Commissioner sought the advice of his Legal Adviser, and as you know Mr. Feetham expressed the opinion that the Concession might be terminated by notice. This information was communicated to the Resident Commissioner, Sir James Macgregor, in a despatch from the High Commissioner dated the 20th March, 1923, in which His Royal Highness said:—"You will doubtless inform the Chief Sekgoma of the opinion expressed by Mr. Feetham. I would suggest that in the event of the Bamangwato being desirous of taking steps to terminate the Concession it might perhaps be advisable for the Chief to submit definite proposals to the Company." I do not think anyone would be justified in concluding that it was the intention of the Secretary of State to take steps to secure the cancellation of the Concession or that he was in a position to do so. The High Commissioner advised the Chief to submit proposals to the Company, and intimated his intention to ask the Secretary of State to take the matter up with the Company. This was done, but as the Chief is doubtless aware, the High Commissioner in a despatch addressed to the Resident Commissioner and dated the 3rd June, 1924, wrote:—"I shall be obliged if you will inform the Chief Sekgoma that the question of the determination of the Concession is engaging the attention of the Secretary of State, but that the matter is not free from difficulty and that no decision has yet been reached." This despatch was signed by me as High Commissioner, and I am familiar with everything which has transpired since June, 1924, and I have no hesitation in assuring the Chief that the position is exactly the same to-day as it was in June, 1924, inasmuch as the difficulties still exist and no decision has yet been reached. The long and careful consideration which the Government has given to these questions has satisfied it that the Concession cannot be terminated by any action of the Government, and that if the Chief wishes to put an end to the Concession he himself must take the matter up with the Company.

Recent negotiations have shown that the Company is prepared to agree to a reasonable compromise, but it is most unlikely that the Company would surrender its rights under the Concession without a struggle. It would be certain to challenge any attempt on the part of the Chief to secure the cancellation of the Concession by giving a year's notice, and having carefully considered, on the one hand, the risks involved by taking such a step, and, on the other, the opportunity of coming to a favourable agreement with the Company the Government strongly advises the Chief to accept the Company's offer rather than have recourse to litigation.

With regard to the statement by the Chairman of the Company in 1924 that the Secretary of State had intimated that mining operations in Native Reserves were undesirable in the interests of the Natives, that view was expressed, it must be remembered, with reference to mining operations under the old Concession without the restrictions and safeguards which are embodied in the proposed new Agreement and in the new mining proclamation. The proposals which the Government now advises the Chief to accept involve an entirely different kind of mining under a different Concession. The mining which the Government assures the Chief would be beneficial to the Tribe is for a limited period of years and subject to an undertaking from the Company to surrender very substantial benefits to the Tribe. Mining would be restricted to certain specified areas, and would be subjected to a very stringent mining law.

I appreciate, Chief, that the difficulties which you feel with regard to this question of mining are mainly due to anxiety lest any mining operations which may be undertaken should curtail the extent of the lands, and particularly the grazing lands where there is water, available for the use of the Tribe, and as it would probably be helpful to you in removing your anxiety in this respect I can give you this definite assurance, namely, that if it can be shown that mining operations (if any are undertaken) have resulted in a diminution of the lands available to the Tribe, the Government will take

such steps as are necessary to ensure that adequate lands of a suitable nature are made available to meet the needs of the Tribe.

The Chief and his predecessors and the Bamangwato people have been on numerous occasions assured by myself and previous High Commissioners that they would be consulted before the Government of the Protectorate is transferred to the Union or any other Government. I can only repeat these assurances now, and if the Chief proceeded to England it is most unlikely that the Secretary of State would be able to add anything to these assurances which have been given by successive British Governments since 1910. It would appear, therefore, that there is nothing to be gained by the Chief proceeding to England, to discuss this question with the Secretary of State.

As to the question of mining I have already said that the Government cannot cancel the Concession even if it wished to do so. Only the Chief himself, as the successor to Khama who granted the Concession, can take legal action against the Company with a view to terminating the Concession. If the Chief decides to take action against the Company the Government will make no attempt to prevent him doing so other than advise him against the wisdom of such a course. As I have said before, the Government does not wish to put any pressure on the Chief in regard to this question of mining. The Secretary of State and I have both given the Chief our advice as the fathers and protectors of his people. Having given that advice the decision must rest with the Chief, and I do not see what purpose is to be gained by the Chief proceeding to England to discuss with the Secretary of State a matter in which the decision rests with himself and not with the Government. It is not likely that the Secretary of State could do more than repeat the advice contained in his telegram to me which I quoted to the Chief on Wednesday.

As the Chief has asked me to do so I will put before the Secretary of State his request for an interview in England, but I doubt if the Secretary of State will be convinced of the necessity for this. When the Secretary of State's answer to the Chief's request has been received, I will communicate it to him through the Resident Commissioner.

Hostel, Keerom Street, Cape Town,
10th August, 1929.

YOUR EXCELLENCY,

I WISH to thank Your Excellency for favourably considering my application to proceed to England to interview the Secretary of State on the matters mentioned by me at our first interview.

I thank Your Excellency for acceding to my request, and I wish to express my gratitude in anticipation for Your Excellency's best endeavour in securing the Secretary of State's permission on my behalf.

If it meets the convenience of His Majesty's Secretary of State, I should like to proceed to England before the winter sets in.

I shall await Your Excellency's communication, as promised, through the Resident Commissioner.

I have, &c.,
TSHEKEDI KHAMA,
Acting Paramount Chief of the Bamangwato Tribe.

To His Excellency
The High Commissioner,
South Africa.

MY FRIEND, High Commissioner's Office, Cape Town, 10th August, 1929.

HIS EXCELLENCY has asked me to reply briefly to the points you raised last night. He understood you to say that Clause 24 (v) of the Charter and Sir Sidney Shippard's letter to Chief Khama of 16th December, 1889, indicated that the Government granted the British South Africa Company the right to mine anywhere in the Bechuanaland Protectorate without requiring them to obtain Concessions.

Lord Athlone desires me to say that Clause 24 (v) of the Charter must be read in conjunction with Clauses 3 and 4. From Clause 3 the Chief will see that the Company was "authorised and empowered *to acquire concessions*," and Clause 4 prescribed certain important conditions which must be complied with before Concessions will be approved by the British Government. The Chief is quite wrong in suggesting that either the Charter or Sir Sidney Shippard's letter gave the Company the right to mine except where it had acquired mineral rights by concession, and the Chief must be aware that no mining operations have ever been undertaken by any Company in

the Bechuanaland Protectorate except under concessions approved by the Secretary of State.

The Chief also contends that Khama would not have signed the 1893 Concession if the British Government had not advised him to do so, and that therefore the British Government must accept a measure of responsibility for the granting of that Concession. The High Commissioner has pointed out that the circumstances in which the Concession was granted have no bearing on the present issue. The position to-day is:—

1. The Company holds a valid Concession to mine in the Bamangwato Reserve, and while it is in force has the right at any time to commence mining operations in the Chief's country.
2. It may be possible to cancel the Concession by taking legal action, but only the Chief can take such action—the Government has no power to cancel the Concession.
3. The Company has agreed to negotiate a new Concession giving valuable benefits to the Chief, and to accept important restrictions on the manner in which mining is to be conducted.
4. The Government *advises* the Chief to accept the Company's offer, but does not wish to put any pressure on him to do so.

I am, &c.,
B. E. H. CLIFFORD,
Imperial Secretary.

To the Chief Tshekedi.

D. 11133/29.

No. 50.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 10th September, 1929.)

(Bechuanaland Protectorate.)
(No. 462.)
(Confidential.)

High Commissioner's Office,
Cape Town, 23rd August, 1929.

MY LORD,

WITH reference to my despatch No. 444 of the 16th August,* I have the honour to report that in the course of a conversation with the Imperial Secretary, Advocate Buchanan gave some interesting information regarding the Chief Tshekedi's wish to interview you in London.

2. It appears that the news that the Union Government is taking over the Caprivi Strip has caused him the greatest concern since he regards it as an "enveloping movement" designed to strengthen the Union claim to the Protectorate and render it more difficult for the Imperial Government to resist a request for transfer. Considering his age and his race the Chief is a young man of quite exceptional sagacity and his knowledge of past and current political events in South Africa is amazing. He told Advocate Buchanan that the geographic position of the Union in relation to the Protectorate caused him profound anxiety in as much as he was now surrounded on all sides by the Union with the exception of a small outlet towards Rhodesia. That outlet he felt provided the only avenue of escape from the Union and although he would much prefer to remain under the direct control of Great Britain he was satisfied that his prospects of remaining out of the Union would be of longer duration under the Rhodesian Government than under a Government which was obliged in accordance with the South Africa Act to give favourable consideration to a resolution from the Union Parliament asking for the transfer of the administration of the Protectorate. He therefore hopes that his Reserve can be transferred to Rhodesia as he feels that they will welcome him and he thinks that Mr. Moffat's missionary associations will make it easier to secure favourable terms.

3. He is under the impression that the Government and people of Southern Rhodesia are opposed to the British South Africa Company and he imagines that they will do their utmost to assist him to secure the cancellation of the Khama Concession. I am disposed to agree with him that the Rhodesian Government might endeavour to secure the cancellation of the British South Africa Company's Concession, but I doubt if they would agree to the Chief's proposal to lock up the mineral wealth of the country. On the contrary, public opinion in Southern Rhodesia would probably clamour

* No. 49.

for mining development much more vehemently and certainly more effectively than the few Europeans in the Protectorate.

4. The Chief's desire for transfer to Southern Rhodesia raises issues of the first magnitude, but his request might be usefully employed to prepare public opinion in advance for changes of policy which may have to be considered at some future date. The attitude of the Chiefs in Basutoland and the Bechuanaland Protectorate towards the Union is well known to politicians here and if the Chief were to announce his preference for Southern Rhodesia as the principal reason for his visit to England, such a statement while achieving the desired publicity would not be likely to create much surprise here and would give His Majesty's Government in the United Kingdom an opportunity of replying that they were not prepared to agree to any proposals for the transfer of either European or Native areas to other Governments at the present, but that when the time came to decide the destination of the Protectorate the views of the Chief and other interested parties would be carefully considered.

5. I have already reported that the primary object which moved the Government of South West Africa to ask for the Caprivi Strip appeared to be associated with the recruitment of Natives for the South West Africa mines, but it is quite possible that the request may be a preparatory step towards a renewal of former requests for transfer of the Territory to the Union. It is even possible that the Prime Minister may raise this question at the next Imperial Conference, but when one remembers the issue on which the recent election was fought, the Nationalist manifesto, and the sneering references which General Hertzog recently made in the House to the "Kaffir States" of the North and to the negrophile policy of the British Government it is difficult to credit him with any such intention. In such an unlikely event there would appear to be no alternative but to explain to the Prime Minister that recent events in the Union rendered the moment unpropitious for consulting the House of Commons—or the Natives.

I have, &c.,
ATHLONE.
High Commissioner.

D. 11562/29.

No. 51.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 10.15 p.m., 18th September, 1929.)

TELEGRAM.

[*Answered by No. 52.*]

18TH SEPTEMBER. No. 72. Resident Commissioner reports that Chief Tshekedi has been visiting Chiefs of Bakwena and Bangwaketse tribes presumably with a view to inducing them to co-operate with him in policy described in my despatches 444 of 16th August* and 462 of 23rd August.† Three Chiefs subsequently sought interview with the Resident Commissioner which was granted. They asked for High Commissioner's permission for all of them to proceed to England to interview you and when questioned regarding their business they replied that they were not satisfied with replies given by various High Commissioners to their protests against Reserves being placed under Union rule, and they wished to obtain definite assurance from the Secretary of State that they would not be transferred to the Union. When questioned closely Tshekedi asserted that the above was the only matter they wished to see you about. Tshekedi, I feel sure, wishes to and will raise mining question but I doubt if his views on this subject are shared by his brother Chiefs. Isang was apparently not approached. He is progressive and might favour mining. Sebele is worthless fellow and would be reluctant to forego his subsidy even if opposed to mining. Bathoen's people probably hold mixed views. Company state that money necessary for mining development of Bechuanaland Protectorate is available but cannot be held indefinitely in suspense, and if present opportunity missed prospect may be seriously prejudiced. They ask that pending settlement of Bamangwato dispute new Mining Law be applied to other concessionary areas, and ask for opportunity to discuss terms

* No. 49. † No. 50.

on which the Government would be prepared to make Crown grant in accordance with its provisions in respect of adjoining Crown Lands.

Mr. Duncan's view is that concessions referred to are unassailable at law and I recommend early settlement of Mining Law and favourable consideration of the Company's proposals.—ATHLONE.

D. 11562/29.

No. 52.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 3 p.m., 28th September, 1929.)

TELEGRAM.

No. 89. YOUR telegram 18th September, No. 72.* Experience in connection with Swazi deputation to this country makes me anxious to avoid receiving any deputation of Bechuana Chiefs if it is not absolutely necessary, and proposed visit of Tshekedi and other Chiefs would seem to be inopportune and likely to serve no useful purpose. If object is to discuss question of transfer to Union I could only say that there is no proposal for transfer of Protectorate or any part of it to the Union under consideration at present and that I have no reason to suppose that such a proposal is likely to be put forward in the near future; and that in any case in accordance with the assurances given in the past the natives would be given a full opportunity of expressing their views on any such proposal and that any representations they may make would receive most careful consideration before any decision is taken. As to the question of mining in the Bamangwato Reserve, it would seem to be undesirable, even if it were practicable, to transfer negotiations with Chief on this subject to London. If therefore Tshekedi should raise this question, as he no doubt would, I should not be able to do more than repeat the statement in my telegram of the 1st August† and tell him if he should require further advice to consult with the Resident Commissioner and with you. If you concur I should be glad in the circumstances if you would explain position to Tshekedi and other Chiefs accordingly. Further communication will be sent as to Mining Law after discussion with British South Africa Company.—PASSFIELD.

D. 13015/29.

No. 53.

THE SECRETARY OF STATE to THE HIGH COMMISSIONER.

(Sent 7 p.m., 1st November, 1929.)

TELEGRAM.

[Answered by No. 54.]

No. 89. MY telegram of 28th September No. 80.‡ After referring to proposals discussed by Imperial Secretary with Chaplin last February, British South Africa Company ask if they can be furnished with revised draft of Bechuanaland Protectorate Mining Proclamation in form which I am prepared to approve.

As explained in my telegram No. 21 of 14th March,§ draft enclosed in your Confidential despatch No. 82 of 1st February‖ was not forwarded to British South Africa Company pending further consideration, and I shall be glad to learn whether you have now any further suggestions as to form of Proclamation in order that I may complete examination of draft before it is sent to Company. It would be convenient if a supply of revised prints could be forwarded.

British South Africa Company have sent us copy of Sir Drummond Chaplin's letter to Imperial Secretary of 13th September. I presume that I shall receive your report in due course on suggestions contained in that letter. As regards protection of interests of natives employed in or about mines I note that Clause 107 of draft Proclamation enables you to issue regulations relating to health, sanitation, and safety, but not for compensation for death or accident. Presume omission of reference to

* No. 51. † No. 48. ‡ No. 52. § No. 31. ‖ No. 28.

last-mentioned matter due to fact that separate legislation on this subject is contemplated, see your despatch 29th September, 1927, 475.* Should be glad if early consideration could be given to provisions to be enacted on above-mentioned subjects; in this connexion see information as to Belgian Congo forwarded in my Confidential despatch 14th September.†—PASSFIELD.

D. 14944/29.

No. 54.

THE HIGH COMMISSIONER to THE SECRETARY OF STATE.

(Received 3rd December, 1929.)

(Bechuanaland Protectorate.)
(No. 611.) High Commissioner's Office,
MY LORD, Cape Town, 15th November, 1929.

WITH reference to your telegram No. 89 of the 1st November‡ on the subject of the draft Mining Law for the Bechuanaland Protectorate, I have the honour to inform you that the following suggested amendments will require to be considered.

2. Clause 2. The definitions of "occupier" and "owner" to be amended in order to meet Chief Tshekedi's objection that the existing definition appears to transfer the ownership of minerals from the Chiefs to the Crown.

3. Clause 4 (3). It is suggested that the following proviso should be added at the end of the sub-clause:—"Provided that the Registrar shall obtain the written authority of the High Commissioner before refusing to register a concession which has received the approval of the Secretary of State in writing."

4. Clause 6. A provision will need to be inserted requiring that the consent of the Chief shall be obtained before public prospecting is allowed in a native reserve.

5. Clause 16 to be amended by the deletion of the word "when" in the second line and the substitution of the words "within thirty-one days of."

6. Clause 31 to remain as printed except that the rate of rental should be reduced from two shillings to one shilling but without right to abandon unmineralised areas during the prescribed life of the concession and without deduction from any sums payable to chiefs—see my telegram No. 31 of the 11th May§ which explains reasons for this alteration.

The following sub-clause to be added to Clause 31, viz.:—

"(2) Failure to pay the rental prescribed in the preceding sub-section shall involve forfeiture of the concession which shall thereupon be dealt with in accordance with Section thirty-four."

7. Clause 32 to be deleted and replaced by a new clause prescribing penalties for failure to satisfy the Mining Commissioner that mining is being continuously and efficiently conducted on mineral concessions or Crown grants. The terms of this proposed clause will require to be settled after consultation with the mining expert and the concessionaires.

8. Clause 34. In the revised version of this clause the words "or abandoned under Section thirty-two" should be deleted; paragraph (*a*) to be altered to read:—

"permit the former holder of a forfeited concession to resume prospecting thereon during the unexpired period of the concession," &c., and the words "or other charges" to be inserted between the word "rental" and the words "due to cover payment by chiefs";

and paragraph (*b*) to be amended to read:—

"dispose of the mineral rights during the unexpired period of the forfeited mineral concession by means of a Crown grant provided that any future payments due to the owner of the mineral rights under the original concession shall not be waived or reduced without his consent in writing."

9. The following suggested amendments have been agreed to in consultation with the De Beers Company:—

Clause 36 (1) Insert at the beginning the words "Except as provided in Sub-Section (2) hereof."

Clause 38 (2) Delete the words from "a share" down to "revenue" and substitute "one-half of the realised profit derived from the working of any

* D. 10940/27: not printed. † D. 10971/29: not printed. ‡ No. 53. § No. 40.

diamond pipe. In assessing such profit," cost, &c. The last sentence of this sub-clause to be deleted.

Clause 38 (4). After the word " inclusive " add the words " and Sections thirty, thirty-two and thirty-four."

Clause 39 (1). The proviso to this sub-clause to be deleted, and the following substituted :—

" Notwithstanding anything to the contrary contained in Part II of this Proclamation there shall be no limit to the number of alluvial claims which the holder of a concession or his servants authorised to prospect for him may peg and acquire title for in his behalf."

Clause 40 (1). For " fifteen " substitute " ten."

10. The proposed new amendments have not yet received the concurrence of the Companies concerned, nor have they been reviewed by the mining expert or my legal adviser.

11. I am in favour of the suggestion in Sir Drummond Chaplin's letter of the 13th September that the Proclamation should be applied to the remainder of the Protectorate pending settlement of the Khama Concession.

12. The matters referred to in the last paragraph of your telegram are receiving consideration.

13. Additional prints of the draft Proclamation are being sent to the Dominions Office. These prints do not, however, include the proposed amendments.

I have, &c.,
ATHLONE,
High Commissioner.

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END